

LYNNWOOD CITY COUNCIL

Business Meeting

**This meeting will be held
electronically via Zoom. See the City
of Lynnwood website for details.**

Date: Monday, July 13, 2020

Time: 6:00 PM

10 CALL TO ORDER & FLAG SALUTE

20 ROLL CALL

30 APPROVAL OF MINUTES

A Business Meeting ~ June 8, 2020

B Special Work Session ~ June 11, 2020

C Work Session ~ June 15, 2020

D Business Meeting ~ June 22, 2020

E Special Work Session ~ June 25, 2020

40 MESSAGES AND PAPERS FROM THE MAYOR

50 CITIZEN COMMENTS AND COMMUNICATIONS

60 PRESENTATIONS AND PROCLAMATIONS

A COVID-19 Update

70 WRITTEN COMMUNICATIONS AND PETITIONS

80 COUNCIL COMMENTS AND ANNOUNCEMENTS

90 BUSINESS ITEMS AND OTHER MATTERS

90 .1 UNANIMOUS CONSENT AGENDA

A Confirmation of Appointment: Human Services Commission Applicant Kris Hildebrandt

B Contract: Consultant Engineering Services: Facility Plan for Lynnwood Wastewater Treatment Plant

C Voucher Approval

90 .2 PUBLIC HEARINGS OR MEETINGS

90 .3 OTHER BUSINESS ITEMS

A Ordinance: Franchise Agreement with Level 3 for Operations of Communication Facilities

B Resolution - Addressing Budget Gap for 2020

C Executive Session, if needed

100 NEW BUSINESS

110 ADJOURNMENT

THE PUBLIC IS INVITED TO ATTEND

Parking and meeting rooms are accessible for persons with disabilities. Individuals requiring reasonable accommodations may request written materials in alternate formats, sign language interpreters, language interpreters, physical accessibility accommodations, or other reasonable accommodations by contacting 425-670-5023 no later than 3pm on Friday before the meeting. Persons who are deaf or hard of hearing may contact the event sponsor through the Washington Relay Service at 7-1-1.

"El estacionamiento y las salas de junta cuentan con acceso para personas con discapacidad. Las personas que requieran de adaptaciones razonables pueden solicitar materiales impresos en formatos alternativos como intérpretes de lenguaje de señas, intérpretes de idiomas, asistencia física para acceso, así como otros ajustes razonables. Pueden comunicarse al número 425-670-5023 antes de las 3:00 pm del Viernes antes a la reunión. Las personas con discapacidad auditiva o con problemas de audición pueden comunicarse con el patrocinador del evento a través del Washington Relay Service al 7-1-1."

Regular Business Meetings are held on the second and fourth Mondays of the month. They are videotaped for broadcast on Comcast Channel 21 and FIOS - Frontier Channel 38 on Wednesdays at 7:30p.m. and Sundays at 7:00a.m. and 2:00p.m.

CITY COUNCIL ITEM 30-A

**CITY OF LYNNWOOD
Executive**

TITLE: Business Meeting ~ June 8, 2020

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:	Type:
Business Meeting June 8, 2020	Backup Material

CITY OF LYNNWOOD
CITY COUNCIL BUSINESS MEETING MINUTES
June 8, 2020

10. CALL TO ORDER - The June 8, 2020 Business Meeting of the Lynnwood City Council, held via Zoom, was called to order by Mayor Smith.

20. ROLL CALL

Mayor & Council:

Mayor Nicola Smith
Council President Christine Frizzell, Chair
Council Vice President Shannon Sessions
Councilmember Ruth Ross
Councilmember Ian Cotton
Councilmember George Hurst
Councilmember Julieta Altamirano-Crosby
Councilmember Jim Smith

Others Attending:

Finance Director Sonja Springer
Strategic Planner Corbitt Loch
IT Director Will Cena
Communications Manager Julie Moore
Commander Chuck Steichen

Asst. City Administrator Art Ceniza
Acting City Clerk Karen Fitzthum
City Attorney Larson

30. APPROVAL OF MINUTES

Motion made by Council Vice President Sessions, seconded by Councilmember Ross, to approve the minutes of:

A. *Special Work Session – May 14, 2020*

B. *Work Session – May 18, 2020*

The minutes were approved as presented.

40. MESSAGES AND PAPERS FROM THE MAYOR (1:15)

Mayor Smith made comments related to recent events around the nation, Lynnwood Police Department's response to the death of George Floyd, racial equity and social justice ongoing policies and activities in Lynnwood, Pride month, and Phase 2 opening of Snohomish County.

50. CITIZENS COMMENTS AND COMMUNICATIONS (5:42)

The following individuals made comments:

- Brandon Duncan, Lynnwood
- Kerri Lonergan-Dreke, Lynnwood
- Carol McMahon, Lynnwood
- Ted Hikel, Lynnwood

- Pam Hurst, Lynnwood
- Rosa Antoine, Lynnwood

60. PRESENTATIONS AND PROCLAMATIONS

A. COVID 19 Update (26:25)

Council received an update on the COVID-19 situation from staff. Commander Steichen gave an update on the status of COVID-19 in the county and city as well as the reopening of Snohomish County to Phase 2.

Communications Manager Julie Moore discussed a summary of business responses related to COVID-19, city expenses, CARES Act funding and other efforts underway. Council Vice President Sessions reviewed highlights of the recent Business Relief Funds Work Group meeting; Councilmember Smith reviewed highlights of the recent Community Relief Fund Work Group meeting. Questions and answers followed.

Motion made by Council President Frizzell, seconded by Council Vice President Sessions, to approve the CARES Act \$700,000 grant with \$500,000 going toward businesses and \$200,000 toward community funding.

Councilmembers spoke to the motion.

Motion made by Councilmember Smith, seconded by Councilmember Hurst, to amend the motion to also discuss the details of distribution of funds at the June 15 Work Session.

Councilmembers spoke to the amendment.

Upon a roll call vote, the amendment failed (2-5) with Councilmembers Smith and Hurst voting in favor and Councilmembers Sessions, Frizzell, Ross, Cotton, and Altamirano-Crosby voting against the amendment.

Upon a roll call vote, the original motion passed unanimously (7-0).

B. Presentation: Impacts of COVID-19 on Sno-Isle Library Operations (1:30)

Sno-Isle Library System Executive Director Lois Langer Thompson gave an update on the impacts of COVID-19 on the library operations. She explained how the library pivoted to expand its online offerings following library closures. Questions and answers followed.

C. Presentation: Impacts of COVID-19 on Administration Services Operations (1:42)

Director Springer reported on impacts of COVID-19 on Administration Services Operations, especially Utility billing, Emergency Operations expenses, 2021-2022 budget development, the annual audit, 2019 Comprehensive Annual Financial Report preparation, and employee telecommuting. Questions and answers followed.

1
2 70. WRITTEN COMMUNICATIONS AND PETITIONS
3

4 80. COUNCIL COMMENTS AND ANNOUNCEMENTS (1:57)
5

6 Councilmembers commented on recent developments in the City.
7

8 *Motion made by Council President Frizzell, seconded by Councilmember Cotton, to extend the*
9 *meeting until the completion of New Business items. Motion passed unanimously.*
10

11 90. BUSINESS ITEMS AND OTHER MATTERS

12 90.1 UNANIMOUS CONSENT AGENDA (2:22)
13

14 *Items listed below were distributed to Councilmembers in advance for study and were*
15 *enacted with one motion.*
16

17 *Councilmember Altamirano-Crosby moved for unanimous consent of the following*
18 *items:*
19

20 A. Voucher Approval

21 *Approve claims and payroll in the amount of \$1,413,862.18 and \$1,070,333.91*
22 *respectively.*
23

24 *Motion passed unanimously.*
25

26 90.2 PUBLIC HEARINGS OR MEETINGS
27

28 90.3 OTHER BUSINESS ITEMS
29

30 A. Ordinance: Interim Floodplain Development Regulations (2:23)
31

32 *Motion made by Councilmember Cotton, seconded by Council President Frizzell,*
33 *to adopt Ordinance No. 3359, "AN ORDINANCE OF THE CITY COUNCIL OF*
34 *THE CITY OF LYNNWOOD, WASHINGTON, ESTABLISHING INTERIM*
35 *FLOOD HAZARD AREA REGULATIONS; AMENDING CHAPTER 16.46 OF*
36 *THE LYNNWOOD MUNICIPAL CODE; SETTING A DATE FOR A HEARING*
37 *ON THE INTERIM REGULATIONS; AND PROVIDING FOR SEVERABILITY,*
38 *AN EFFECTIVE DATE, AND SUMMARY PUBLICATION." Upon a roll call*
39 *vote, the motion passed unanimously (7-0).*
40

41 B. Resolution: Mayoral Declarations of Emergency (2:25)
42

43 *Motion made by Councilmember Hurst, seconded by Councilmember Cotton, to*
44 *adopt Resolution No. 2020-06, "A RESOLUTION OF THE CITY OF*
45 *LYNNWOOD, WASHINGTON, RATIFYING, CONFIRMING AND ADOPTING*
46 *RULES AND REGULATIONS STATED IN THE MAYOR'S DECLARATIONS OF*
47 *EMERGENCY – CITY OF LYNNWOOD COVID-19 RESPONSE DATED*

1 *MARCH 4, 2020 AND MARCH 17, 2020.” Upon a roll call vote, the motion*
2 *passed unanimously (7-0).*

3
4 C. Ordinance: Confirmation of Curfew Order (2:28)

5
6 *Motion made by Council Vice President Sessions, seconded by Council President*
7 *Frizzell, to adopt Ordinance No. 3360, “AN ORDINANCE OF THE CITY OF*
8 *LYNNWOOD, WASHINGTON, RATIFYING, CONFIRMING AND ADOPTING*
9 *THE MAYOR’S CIVIL EMERGENCY ORDER IMPOSING CURFEW; AND*
10 *PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY*
11 *PUBLICATION.”*

12
13 Councilmembers spoke to the motion.

14
15 *Upon a roll call vote, the motion passed unanimously (7-0).*

16
17 D. Discussion: Executive Veto of Ordinance 3358 (2:33)

18
19 Council President Frizzell introduced this topic and discussed options available to
20 the Council. Councilmembers discussed this item. Councilmember Hurst read a
21 memo which he requested be included in the minutes (Attached).

22
23 *Motion made by Councilmember Smith, seconded by Councilmember Cotton, to*
24 *override the Mayor’s veto of Ordinance 3358.*

25
26 Councilmembers spoke to the motion.

27
28 *Upon a roll call vote, the motion failed (4-3) due to the number of votes required*
29 *to override a veto. Councilmembers Cotton, Altamirano-Crosby, Smith, and Hurst*
30 *voted in favor; Councilmembers Frizzell, Sessions, and Ross voted against the*
31 *motion.*

32
33 E. Executive Session, if needed

34
35 None.

36
37 100. NEW BUSINESS

38
39 *Scheduling Motion made by Council President Frizzell, seconded by Councilmember*
40 *Cotton, to reinstate the 6/22 Business Meeting, previously cancelled because of AWC, to*
41 *be conducted via Zoom. Motion passed unanimously.*

42
43 *Scheduling Motion made by Councilmember Hurst, seconded by Councilmember Cotton,*
44 *to reinstate the 6/29 Work Session, previously rescheduled as a Business Meeting*
45 *because of AWC, to be conducted via Zoom. Motion passed unanimously.*

46
47 Councilmember Hurst asked about the status of an investigation regarding an anonymous
48 letter sent to the Council by City of Lynnwood employees. Mayor Smith noted that
49 Director Chin is researching the matter.

1
2 110. ADJOURNMENT
3

4 *Motion made by Councilmember Cotton, seconded by Councilmember Altamirano-*
5 *Crosby to adjourn the meeting. Motion passed unanimously.*
6

7 The meeting was adjourned at 10:49 p.m.
8
9

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11
12 _____
13 Nicola Smith, Mayor
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June 4, 2020

During New Business at the next City Council Business Meeting, June 8, I will bring a motion for a vote to override the Mayor's veto of the Ordinance 3358 that passed to end the City Utility Tax. Below is my response to the Mayor's objections to the ordinance that she listed in her veto memo to the Council.

The Mayor states that instead of eliminating the City Utility Tax to provide tax relief to residents and businesses, staff is preparing plans to use the federally funded CARES Act to "provide financial assistance to struggling businesses and residents". But the fact is, City staff has already told the Council that of the \$1,188,000 that the CARES Act provides to Lynnwood, only \$500,000 will be used for these assistance programs. The other \$688,000 will be used by staff to recover City Department expenses related to Covid 19. According to the Mayor's memo the City Utility Tax repeal, if enacted, will provide nearly \$1.5 million in tax relief a year to residents and businesses. The Mayor is vetoing a permanent \$1.5 million tax reduction and in exchange only offers \$500,000 of temporary funds from the Cares Act. If the Mayor is sincere about using the CARES Act funding for financial assistance to businesses and residents then the Council should act. As the approving authority for expenditures in the City, the Council needs to be the decision maker to ensure that all of the \$1.188 million CARES Act money is used for relief assistance. A reasonable goal is for those relief programs to be finalized by the next Council Business meeting on June 22, 2020.

The Mayor states that the decision to delay the effective date of the utility tax repeal to January 1, 2021 is outside of the "Covid 19 emergency response time frame". I am not sure what the Mayor means by that phrase because the proclamations by the Governor restricting actions by all city councils to Covid 19 matters does not provide a time limit on any legislation passed by the City Council. The financial impact of the Covid 19 emergency will be felt for years on a City level as well as for the residents and businesses of Lynnwood. The delay to 2021 gives the City ample time during the 2021-2022 budget process to include appropriate spending cuts that offset any revenue deficits.

The Mayor is critical of what she describes as a lack of deliberation and study on the impact of the City utility tax repeal. But if you look at Council minutes the Council discussed the repeal at meetings on May 11, May 18, and May 26. There was ample time for Council to deliberate on the issue and to make an informed decision that resulted in the City utility tax repeal.

In her memo, the Mayor is trying to divert attention away from her veto of a relief tax reduction by suggesting the Council has taken action that violated the Open Public Meeting Act (OPMA). The Governor's Covid Emergency Order in March that created stay at home requirements also suspended many requirements of the OPMA for all city councils statewide. The Governor's order advises city councils to limit any actions to what is routine and necessary but does give all city councils the power to take any action on Covid 19 related matters. If you review the deliberations of the Lynnwood City Council's repeal of the City utility tax the repeal

was a response to Covid 19's impact on residents and businesses in Lynnwood. In addition, the repeal ordinance itself, drafted by the City Attorney, cites the Covid 19 crisis as the reason for the repeal of the utility tax. For the Mayor to imply the Lynnwood City Council violated the Open Public Meeting Act is a disservice to the Council and is simply a diversionary ploy by the Mayor.

The Mayor states that the repeal of the utility tax is a significant budget decision made outside of the adopted budget calendar. But the reality is the Covid 19 emergency is forcing staff and Council to make several decisions outside of the budget process: revenue estimates are changing, HR has created a voluntary separation policy, departments are reducing expenditures, meetings that should have been held per the budget calendar have been cancelled. The budget calendar did not anticipate the financial crisis faced by the City, its residents, and its businesses. The Council needed to act and had the right to do so.

The Mayor says the vote by the Council majority to repeal the utility tax "falls short of our stated goal of being a responsive government". I will vote to override the Mayor's veto because the repeal of the utility tax is actually the first substantial action by the Council during this Covid 19 emergency. The Council has talked for months about how we need to help residents and businesses during this crisis without any results. The repeal of the City Utility tax is a long overdue example of being a responsive government.

George Hurst

Lynnwood City Council

June 4, 2020

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The Mayor says the vote by the Council majority to repeal the utility tax "falls short of our stated goal of being a responsive government". I will vote to override the Mayor's veto because the repeal of the utility tax is actually the first substantial action by the Council during this Covid 19 emergency. The Council has talked for months about how we need to help residents and businesses during this crisis without any results. The repeal of the City Utility tax is a long overdue example of being a responsive government.

George Hurst

Lynnwood City Council

CITY COUNCIL ITEM 30-B

**CITY OF LYNNWOOD
Executive**

TITLE: Special Work Session ~ June 11, 2020

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:	Type:
<u>Minutes Special Work Session 061120</u>	Backup Material

CITY OF LYNNWOOD
SPECIAL COUNCIL MEETING MINUTES
June 11, 2020

10. CALL TO ORDER - The June 11, 2020 Special Council Meeting of the Lynnwood City Council, held via Zoom, was called to order by Mayor Smith at 3:04 p.m.

20. ROLL CALL

Mayor & Council:

Mayor Nicola Smith (absent)
Council President Christine Frizzell
Council VP Shannon Sessions
Councilmember Ruth Ross (absent)
Councilmember Ian Cotton (absent)
Councilmember George Hurst
Councilmember Julieta Altamirano-Crosby
Councilmember Jim Smith

Others Attending:

Finance Director Sonja Springer
Strategic Planner Corbitt Loch
Interim Planning Manager Ashley Winchell
South County Interim Fire Chief Hovis
Director Economic Development / Interim
Community Development Kleitsch

Asst. City Administrator Art Ceniza
Acting City Clerk Karen Fitzthum
City Attorney Larson

FINANCIAL IMPACTS OF COVID-19

Director Kleitsch discussed the background of the Economic Development Infrastructure Fund (EDIF). There was discussion around the funding of this fund, potential uses, and the possibility of pausing funding.

Finance Director Springer presented an updated summary of the General Fund Revenue – Expenditure “Gap” for 2020. She summarized that the Total Revenue Shortage in 2020 as a result of COVID-19 and from 2019 revenue shortfall is \$9,441,900. General fund departments (especially Community Development and Economic Development) have identified additional expenditure reductions to their budgets and have brought the remaining “gap” down to \$3,174,300. She summarized that considering all the funds in the city, it is almost a \$9 million reduction in revenue because of COVID-19. Comments, questions, and answers followed.

Strategic Planner Loch introduced a tool which was presented to staff this week as a way to identify the most important and critical services the City provides. The information gleaned from using this tool will help make further decisions about expenditure reductions. Comments, questions, and answers followed. The Council was very impressed and requested a copy. Strategic Planner Loch indicated he would provide a copy.

ADJOURNMENT

1 The meeting was adjourned at 4:40 p.m.

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Nicola Smith, Mayor

CITY COUNCIL ITEM 30-C

**CITY OF LYNNWOOD
Executive**

TITLE: Work Session ~ June 15, 2020

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:	Type:
Minutes: Work Session 061520	Backup Material

**MINUTES OF THE WORK SESSION OF THE LYNNWOOD CITY COUNCIL
HELD MONDAY, JUNE 15, 2020 AT 7:00pm VIA ZOOM**

Attendance:

Mayor Nicola Smith
Council President Christine Frizzell
Council Vice President Shannon Sessions
Councilmember Ian Cotton
Councilmember Ruth Ross
Councilmember George Hurst
Councilmember Jim Smith
Councilmember Julieta Altamirano-Crosby

Others:

Emergency Ops Commander Chuck Steichen
Finance Director Sonja Springer
Strategic Planner Corbitt Loch
Communications Manager Julie Moore
Director Ec. Devt/Interim Comm. Devt. David Kleitsch
Project Tourism Manager Christy Murray

Assistant City Administrator Art Ceniza
Interim City Clerk Karen Fitzthum

Comments and Questions on Memo Items

M-1 Naming Request: Interurban Car 55 at Heritage Park
M-2 Contract Amendment – US Bank

- Mayor Smith solicited comments. There were none.

COVID-19 Update

- Commander Steichen gave an update on COVID-19 statistics in the city, county and state. Snohomish County is doing quite well and trending downward. He discussed requirements for moving to Phase 3 and how the City is preparing once that happens.
- Communications Manager Moore discussed a low-income face coverings program that is being covered by the State. The City will be working on how to deploy those face coverings to those who need them. She also reviewed the status of CARES Act funding. Applications for small businesses will open this week and run through Friday, June 26. The community relief program is also in the works.
- Council comments, questions and answers followed. There was discussion about the process for deciding who gets the grants and the importance of having translators available. Councilmember Smith asked staff to follow up with information about who has the final say for grant disbursement.

Budget Amendment for COVID-19 Grants (41:24)

- Director Springer discussed this budget amendment intended to cover two COVID-19 grants. This would recognize the revenue and the expenditures from the grants.
- Councilmember comments, questions, and answers followed.

Opportunity Zone Update (46:42)

- Director Kleitsch introduced this topic. Project Tourism Manager Murray provided a briefing on Lynnwood's Opportunity Zone. She gave an overview, some background on the Opportunity Zone Program, eligible investment types, benefits, and the status of Lynnwood's Opportunity designation. Director Kleitsch.
- Councilmember comments, questions, and answers followed.

Update: Development & Business Services Process Improvements (1:08:19)

- Director Kleitsch gave an update on Development & Business Services reform efforts since 2017.

50
51 **Ordinance – Change Time of City Council Meetings (1:15:46)**

- 52 • Council President Frizzell discussed the proposed change of time for Council meetings from 7 p.m.
53 to 6 p.m. which Council had discussed prior to COVID-19.
54 • Strategic Planner Loch reviewed the proposed ordinance and draft resolution related to this.
55 • There was discussion related to the termination time for meetings. The majority of Council appeared
56 to be in support of changing the time to 9 p.m. with time extensions as needed. There was discussion
57 about continuing the Zoom portion of meetings even when Council begins to meet in person again to
58 allow for broader participation.
59

60 **Discussion: Council Budget Changes for COVID-19 Adjustments (1:29:50)**

- 61 • Council President Frizzell summarized proposed Council Budget adjustments as a result of COVID-
62 19 and solicited Council feedback.
63 • Councilmember comments, questions, and answers followed.
64

65 **Council Engagement at Summer Events (1:43:25)**

- 66 • Council President Frizzell solicited Council feedback on summer events. She commented that the
67 Council sign is still in the budget, but needs Council approval to move forward. Councilmembers
68 expressed interest in participating in public events as allowed by the current phase regulations and
69 possibly also Zoom conversations with Council. There was discussion about the best ways to interact
70 in meaningful ways with the public and promote engagement.
71

72 **Executive Session – if needed**

- 73 • None.
74

75 **Mayor Comments and Questions (1:59:30)**

- 76 • Mayor Smith gave some background on Lynnwood’s Budgeting for Outcomes process and discussed
77 the move toward using a matrix to determine mission-critical services and programs in the city.
78

79 **Council President and Council Comments (2:05:11)**

- 80 • Councilmembers made comments on recent events around the city.
81 • Council Vice President Sessions read a statement condemning a recent incident caught on video
82 where one of Lynnwood’s police officers was targeted and verbally attacked with a long racist
83 tirade. She also read a statement about the positive work done by the Lynnwood Police Department
84 in the community and the need to defend and support Lynnwood’s police officers. There was
85 discussion around recent national and local events and the need to have a public conversation around
86 race relations and social justice issues.
87 • Councilmember Altamirano-Crosby announced that she had obtained free COVID-19 testing for 300
88 community members this Thursday.
89

90 **Adjourn**

- 91 • Meeting adjourned at 9:43 p.m.
92
93
94
95

96 _____
Nicola Smith, Mayor

CITY COUNCIL ITEM 30-D

CITY OF LYNNWOOD Executive

TITLE: Business Meeting ~ June 22, 2020

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:

[Minutes: Business Meeting 062220](#)

Type:

Backup Material

CITY OF LYNNWOOD
CITY COUNCIL BUSINESS MEETING MINUTES
June 22, 2020

10. CALL TO ORDER - The June 22, 2020 Business Meeting of the Lynnwood City Council, held via Zoom, was called to order by Mayor Smith at 7:00 p.m.

20. ROLL CALL

Mayor & Council:

Mayor Nicola Smith
Council President Christine Frizzell
Council Vice President Shannon Sessions
Councilmember Ruth Ross
Councilmember Ian Cotton
Councilmember George Hurst
Councilmember Julieta Altamirano-Crosby
Councilmember Jim Smith

Others Attending:

Executive Assistant Leah Jensen
Deputy City Clerk Debbie Karber
Finance Director Sonja Springer
Strategic Planner Corbitt Loch
Project Tourism Manager Christy Murray
Commander Chuck Steichen
Communications Manager Julie Moore

Asst. City Administrator Art Ceniza
Acting City Clerk Karen Fitzthum
City Attorney Larson

30. APPROVAL OF MINUTES (7:02 p.m.)

Motion made by Councilmember Ross, seconded by Councilmember Cotton, to approve the minutes of:

A. Business Meeting ~ May 26, 2020

B. Special Work Session ~ May 28, 2020

C. Work Session ~ June 1, 2020

The minutes were approved as presented.

40. MESSAGES AND PAPERS FROM THE MAYOR (7:03 p.m.)

Mayor Smith made comments regarding Lynnwood's commitment to being a safe, welcoming, and equitable community for all, an upcoming meeting on racial equity in the community, and the City's current Phase 2 status. She stated that item 90.3 regarding Community Relief Funding would be removed from the agenda.

50. CITIZENS COMMENTS AND COMMUNICATIONS

None

60. PRESENTATIONS AND PROCLAMATIONS

1 A. COVID 19 Update (7:07 p.m.)

2
3 Council received an update on local COVID-19 statistics from Commander Steichen.
4 Communications Manager Julie Moore discussed face coverings available to the low-
5 income residents, the CARES Act funding budget of \$1,186,000 to address COVID-19
6 related expenses, Business Relief Funds, and Community Relief Funds.
7 Councilmembers made comments and asked questions of staff. Some concerns were
8 raised about the delay of distributing community funding and possible scenarios
9 moving forward.

10
11 70. WRITTEN COMMUNICATIONS AND PETITIONS

12
13 None

14
15 80. COUNCIL COMMENTS AND ANNOUNCEMENTS (7:30 p.m.)

16
17 Councilmembers commented on recent developments in the City.

18 90. BUSINESS ITEMS AND OTHER MATTERS

19 90.1 UNANIMOUS CONSENT AGENDA (7:38 p.m.)

20
21 Items listed below were distributed to Councilmembers in advance for study and were
22 enacted with one motion. Council Vice President Sessions requested removal of item C
23 – *Naming Request: Interurban Car 55 at Heritage Park*. Councilmember Cotton
24 requested removal of item B - *Confirm: Linda Jones for the Tourism Advisory*
25 *Committee*. Councilmember Ross requested removal of item A - *Confirm the*
26 *Appointments of Megan Fujimori and Otmane Riad to the Diversity, Equity and*
27 *Inclusion Commission*.

28
29 *Councilmember Hurst moved for unanimous consent of the following items:*

30
31 D. Contract Amendment - US Bank

32 *Authorize the Mayor to execute a contract amendment with US Bank for the*
33 *provision of banking and financial services for two additional years. The*
34 *estimated two year total is \$80,000.*

35
36 E. Voucher Approval

37 *Approve Claims and Payroll in the amount of \$996,205.79 and \$1,106,136.41*
38 *respectively.*

39
40 *Motion passed unanimously.*

41
42 *Confirm the Appointments of Megan Fujimori and Otmane Riad to the Diversity,*
43 *Equity and Inclusion Commission*

44
45 *Motion made by Councilmember Ross, seconded by Councilmember Hurst, to confirm*
46 *Megan Fujimori and Otmane Riad to fill Positions #1 and #6, respectively to the*
47 *Diversity, Equity and Inclusion Commission.*

Councilmembers spoke to the motion.

Motion passed unanimously.

Confirm: Linda Jones for the Tourism Advisory Committee

Motion made by Councilmember Cotton, seconded by Council President Frizzell, to confirm Linda Jones to fill Position 5, on the Lodging Tax User, Tourism Advisory Committee for the term ending December 31, 2020.

Councilmembers spoke to the motion.

Motion passed unanimously.

Naming Request: Interurban Car 55 at Heritage Park

Motion made by Council Vice President Sessions, seconded by Councilmember to approve staff to formally name the Interurban Trolley Car #55, "Spirt of Walter V. Shannon" and paint the name on the forward compartment of the trolley. Motion passed unanimously.

PUBLIC HEARINGS OR MEETINGS

90.2 OTHER BUSINESS ITEMS

A. Contract Award - Community Relief Funding (removed from the agenda)

B. Resolution-Change Time of City Council Meetings (7:49 p.m.)

Motion made by Council President Frizzell, seconded by Councilmember Cotton, to adopt RESOLUTION NO. 2020-07, "A RESOLUTION OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE COUNCIL RULES OF PROCEDURE AND THE TIME OF CITY COUNCIL BUSINESS MEETINGS AND WORK SESSIONS."

Council President Frizzell summarized the motion. Councilmember Smith requested a copy of the updated Council Rules when they are available.

Motion passed unanimously.

C. Ordinance-Change Time of City Council Meetings (7:53 p.m.)

Motion made by Council President Frizzell, seconded by Councilmember Cotton, to adopt Ordinance No. 3361, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE TIME OF REGULAR BUSINESS MEETINGS AND REGULAR WORK SESSIONS OF THE CITY COUNCIL, AMENDING LMC 2.04.010 AND LMC 2.04.030, AND

1 *PROVIDING FOR AN EFFECTIVE DATE, SEVERABILITY AND SUMMARY*
2 *PUBLICATION.” Upon a roll call vote, the motion passed unanimously (7-0).*
3

4 D. Ordinance: Budget Amendment for COVID-19 Grants (7:58 p.m.)
5

6 *Motion made by Councilmember Cotton, seconded by Councilmember Hurst, to*
7 *adopt Ordinance No. 3362, “AN ORDINANCE OF THE CITY OF LYNNWOOD,*
8 *WASHINGTON, ADOPTING AMENDMENTS TO THE 2019-2020 BIENNIAL*
9 *BUDGET; PROVIDING FOR TRANSMITTAL OF THE AMENDED BUDGET*
10 *TO THE STATE; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE*
11 *DATE AND SUMMARY PUBLICATION.*
12

13 Councilmember Cotton summarized the motion. Councilmember Smith restated
14 his objection to removing item 90.3A. Comments, questions, and answers
15 followed.
16

17 *Upon a roll call vote, the motion passed unanimously (7-0).*
18

19 E. Executive Session, if needed
20

21 100. NEW BUSINESS (8:08 p.m.)
22

23 *Scheduling Motion made by Council President Frizzell, seconded by Council Vice*
24 *President Sessions, to cancel the Special Work Session previously scheduled for*
25 *Saturday, June 27 from 8:30 to 1:30 in the Conference Room at the Lynnwood Church,*
26 *Community Life Center, 19820 Scriber Lake Road, Lynnwood, Washington, 98036.*
27

28 Council President Frizzell spoke to the motion.
29

30 *Motion passed unanimously.*
31

32 Councilmember Hurst brought up the topic he had previously raised of freezing Council
33 salaries and indicated he would draft a letter to the Salary Commission to be reviewed at
34 the next work session. He requested clarification of the regulations surrounding the
35 Salary Commission’s meeting times from City Attorney Larson.
36

37 110. ADJOURNMENT
38

39 The meeting was adjourned at 8:18 p.m.
40
41
42
43

44 _____
 Nicola Smith, Mayor

CITY COUNCIL ITEM 30-E

CITY OF LYNNWOOD
Executive

TITLE: Special Work Session ~ June 25, 2020

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:	Type:
Minutes: Special Work Session 062520	Backup Material

1 **MINUTES OF THE SPECIAL COUNCIL MEETING OF THE LYNNWOOD CITY COUNCIL**
2 **HELD THURSDAY, JUNE 25, 2020 AT 3:00 p.m. VIA ZOOM**

4 **Attendance:**

5 Mayor Nicola Smith (absent)
6 Council President Christine Frizzell
7 Council Vice President Shannon Sessions
8 Councilmember Ian Cotton
9 Councilmember Ruth Ross (absent)
10 Councilmember George Hurst
11 Councilmember Jim Smith (absent)
12 Councilmember Julieta Altamirano-Crosby
13
14 Assistant City Administrator Art Ceniza
15 Interim City Clerk Karen Fitzthum
16

5 **Others:**

Finance Director Sonja Springer
Budget Supervisory Janella Lewis
Strategic Planner Corbitt Loch
Accounting Manager John White
Finance Supervisor Cyndie Eddy
Parks & Recreation Director Lynn Sordel
Director Ec. Devt/Interim Comm. Devt. David Kleitsch
Human Resources Director Evan Chinn

18
19 **State Auditor's Office Entrance Conference for the 2019 Audit –**
20 **Marlon Deppen, Clay Trushinsky and Wendy Choy – State Auditor's Office (3:02 p.m.)**

- 21 • Representatives from the State Auditor's Office provided a presentation including the audit scope,
22 levels of reporting, handling of confidential information, audit costs, expected communication, audit
23 dispute process, loss reporting, peer reviews of the Auditor's Office, audit survey, local government
24 support team, the Center for Government Innovation. Questions and answers followed.
25

26 **Status of the 2020 Financial "Gap" in the General Fund – Sonja Springer, Finance Director (3:20**
27 **p.m.)**

- 28 • Finance Director Springer discussed the status of the 2020 Financial "Gap" in the General Fund and
29 steps the City has taken to offset the \$9.4 million revenue shortage in 2020. She also discussed six
30 options to consider for filling the remaining gap of approximately \$2.2 million. The
31 Administration's recommendation is Option 1 to allow the City to temporarily use a portion of the
32 General Fund unassigned fund balance of Revenue Stabilization Fund Balance.
33 • Strategic Planner Corbitt Loch reviewed proposed amendments to Financial Policies which would be
34 incorporated in option 1.
35 • Council comments and questions followed.
36 • There was discussion about using the possibility of using the Revenue Stabilization Fund due to the
37 emergency nature of the situation in combination with one or more other options.
38

39 **Utility Accounts Receivable and Collection Trends since COVID-19 – John White, Accounting**
40 **Manager (4:11 p.m.)**

- 41 • Accounting Manager White gave an update on Utility Accounts Receivable. He discussed unpaid
42 utility bills by month. Council President Frizzell requested additional aging information about
43 receivables. Finance Director Springer indicated that information would be provided at the July 9
44 meeting.
45

46 **April 2020 Monthly Financial Report – Sonja Springer, Finance Director (4:20 p.m.)**

- 47 • Finance Director Springer discussed the April 2020 monthly financial report showing operating
48 expenditures and revenues for the General Fund. She emphasized that the sales tax revenue was

49 better than expected. It is expected that it will be worse in the months to come. Compared to the
50 same period is 2019, revenues are 15.09% below expectations, but this has been mitigated by
51 significant reductions in expenditures. She also reviewed the Economic Development Infrastructure
52 Fund (EDIF) Summary, the Real Estate Excise Tax (REET) fund, Utilities Fund, and the City's
53 Total Cash and Investment Balances and 2020 Investment Interest Earnings. Council comments and
54 questions followed.

55
56 **Adjourn**

- 57 • Meeting adjourned at 4:34 p.m.
58
59
60

61
62

Nicola Smith, Mayor

CITY COUNCIL ITEM 60-A

CITY OF LYNNWOOD Executive

TITLE: COVID-19 Update

DEPARTMENT CONTACT: Christine Frizzell, Council Vice President

SUMMARY:

The City continues to monitor and respond to the COVID-19 emergency. The Council will receive an update from City staff.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.1-A
CITY OF LYNNWOOD
Parks, Recreation, & Cultural Arts

TITLE: Confirmation of Appointment: Human Services Commission Applicant Kris Hildebrandt

DEPARTMENT CONTACT: Lynn D. Sordel

SUMMARY:

Position 2 of the Human Services Commission is currently vacant. The Mayor recommends Ms. Kris Hildebrandt to fill the vacancy.

ACTION:

Appoint Kris Hildebrandt to position #2 of the Human Services Commission for a term expiring December 31, 2022.

BACKGROUND:

Ms. Hildebrandt submitted her application on November 6, 2019. She was interviewed by Director Sordel on February 6, 2020 and by the Mayor on February 24, 2020. Ms. Hildebrandt attended a commission meeting on January 9. Ms. Hildebrandt's residency and voter registration status have been confirmed. She was interviewed by City Council on June 29.

Members of the Human Services Commission serve for three-year terms, per City ordinance.

The present status of the Human Services Commission is as follows:

Position 1-Vanessa Villavicencio-Term Expires December 31, 2022

Position 2-VACANT-Term Expires December 31, 2022

Position 3-Chris Collier-Term Expires December 31, 2020

Position 4-Sandi Farkas-Term Expires December 31, 2020

Position 5-Pam Hurst-Term Expires December 31, 2020

Position 6-Michelle Reitan-Term Expires December 31, 2021

Position 7-Mary Anne Dillon-Term Expires December 31, 2021

ADMINISTRATION RECOMMENDATION:

Appoint Kris Hildebrandt.

DOCUMENT ATTACHMENTS

Description:

[Human Services Commission Application](#)

Type:

Backup Material

BOARD & COMMISSION APPLICATION

Name: Kris Hildebrandt

Address: [REDACTED]

City: Lynnwood State: WA Zip: 98037

Daytime Phone Number: [REDACTED]

Secondary Phone Number: [REDACTED]

Email Address: [REDACTED]

Thank you for your interest in serving on a Lynnwood Board or Commission. Members of each of the panels are appointed for a specific period of time. Some panels may have a residency requirement. To help us get to know you and your interests better, please answer the questions that follow. Please feel free to use an attachment if you need more space than is provided. You may also submit a resume along with your application.

1. Are you a registered voter in the City of Lynnwood? Yes X ☐ No ☐
If no, are you registered to vote someplace else? Yes ☐ No ☐
2. Please place a check next to the Board or Commission that you are interested in serving on. If you check more than one please prioritize.

- ☐ Arts Commission
- ☐ Civil Service Commission
- ☐ History & Heritage Board
- X ☐ Human Services Commission
- ☐ Diversity, Equity & Inclusion Commission
- ☐ Park & Recreation Board
- ☐ Planning Commission
- ☐ Tourism Advisory Committee

3. Why do you want to serve in this position?

I would like to serve as a Human Services Commissioner to be part of a team who studies the residents' changing needs and the community's ability to address their needs. Lynnwood, like many small suburban cities, is reacting to a changing world. Fortunately Lynnwood has a network of relationships that provide resources and services to city residents. As the city's density and demographics change, Lynnwood will need to focus on growing community

resilience to adapt to urbanization and global change and react to potential natural disasters.

4. What do you perceive as the role of the Board or Commission in the community?
The Human Services Commission is part of the broad effort to achieve Lynnwood's community vision to be a regional model for a sustainable, vibrant community with engaged citizens and an accountable government. The Commission's specific role is to gather and synthesize information from residents, service providers, and existing data bases; assess outcomes; and make recommendations to the Mayor and City Council.
5. How would you represent the interests of the Community?
Commission members have a responsibility to learn about the community by focus groups, community meetings, attending relevant public and private meetings, gathering information from residents, service providers, and researching best practices in human services.
6. What experience or education do you possess that you believe would be helpful?
My degrees, Master of Public Health, Planning and Administration (School of Public Health, University of Michigan) and Bachelor of Arts, Urban and Metropolitan Studies (College of Urban Development, Michigan State University), have prepared me for a career and community service volunteer experiences in King and Snohomish Counties. While employed by Group Health Cooperative, I was the Director of Grants and Community Programs at the Group Health Foundation and Community Services Manager. While employed by the Puget Sound Neighborhood Health Center, a Federally Qualified Health Center, I was the Data Analyst and Planner whose main responsibility was to prepare the federal needs assessment to obtain federal funding. My resume was sent via email.
7. What has been your experience with committees or boards in Lynnwood?
I served on the Parks & Recreation Board from 2011 to Dec. 2019 (chair from 2016-Dec. 2019) and Visioning Task Force, City of Lynnwood (2009-2010). I also served on Lake Forest Park's Human Services Commission from 1995-2000 (chair from 1996-1999).
8. Is there anything else you would like to tell us?
Thank you for reviewing my application.

Please submit your application to:

Lynnwood City Hall
18900 44th Ave W, Lynnwood, WA 98036
jmoore@LynnwoodWA.gov | 425-670-5023

CITY COUNCIL ITEM 90.1-B

CITY OF LYNNWOOD Public Works

TITLE: Contract: Consultant Engineering Services: Facility Plan for Lynnwood Wastewater Treatment Plant

DEPARTMENT CONTACT: Jared Bond, Operations and Maintenance Manager

SUMMARY:

The Wastewater Treatment Plant (WWTP) is an aged facility that must continue to operate amidst a rapidly growing city, and an ever-changing regulatory environment. This project will develop a facility plan that will provide the City with a comprehensive approach for the future of the WWTP over the next 20 to 30 years. This plan will begin with significant stakeholder engagement, and will evaluate liquid stream processing, solids handling, nutrient removal, disinfection, as well as physical layout and staffing. One major outcome will be how our facility can accommodate all projected growth including the city center. As such, this is an extensive contract with numerous components involving many disciplines. In addition, work produced in this study will provide the baseline for numerous other studies over the next several years including the next Sewer Comprehensive Plan. This is a significant amount of effort which is reflected in the price of the study.

ACTION:

Authorize the Mayor to enter into, and execute on behalf of the City an Engineering Services contract with RH2 for preparing the Lynnwood Wastewater Treatment Plant Facility Plan, in an amount not to exceed \$713,100.00 with an additional \$25,000.00 contingency for a total amount of \$738,100.00.

BACKGROUND:

The City of Lynnwood's (City) Wastewater Treatment Plant (WWTP) is a highly complex facility that performs many functions simultaneously. This study will look across the broad spectrum of those functions and do a deep dive into processes, current state, deficiencies, and proposed solutions. This Facility Plan Study will actually be a synthesis of several separate but related studies that in and of themselves will require significant time and effort to complete.

The City of Lynnwood's (City) wastewater treatment plant (WWTP) provides liquid stream treatment with a conventional activated sludge process and on-site solids handling. The solids handling processes include blending of primary sludge with waste activated sludge, dewatering with a screw press, and burning of the dewatered sludge in an incinerator. In the past few years, issues with the reliability of the incineration process and its ancillary sub processes have resulted in significant downtime and problems for the City. The City also has faced uncertainty with the changing air quality regulations for incinerators. The City has requested an evaluation of available solids handling processes, including both on-site and off-site options, and comparison to the incineration process for selection of a preferred alternative. The City understands the solids handling processes are closely interrelated to the liquid stream treatment process; therefore, the liquid stream treatment also needs to be considered in the evaluation. In addition, the Washington State Department of Ecology (Ecology) has been modeling and studying the impacts of nitrogen in the effluent of treatment plants that discharge into the Puget Sound. With the Salish Sea initial modeling now complete, Ecology is moving forward with a General Permit to regulate the amount of nitrogen species being discharged by

the approximately 70 treatment plants that discharge into the Puget Sound, which includes the City's WWTP.

Initiating a planning process to perform a comprehensive evaluation of both liquid stream treatment process and the associated impacts on the solid treatment process is a necessity. This effort will culminate in a thorough understanding of the current system and its ability to perform over the next 20 years.

This facility plan, in order to be successful, has to achieve several criteria:

- Provide reliable performance and reduce downtime and resulting air/water quality violations.
- Accommodate future growth in load to the plant.
- Eliminate waste/recycle streams impact on the liquid stream process.
- Accommodate the site limitations – space available for the process, access difficulties for large vehicles, location in a residential neighborhood and a natural ravine.
- Allow for additional plant modifications on the liquid stream side to incorporate additional nutrient removal

To achieve these goals, an experienced team of consultants need to work together and perform the following tasks:

- Start with an evaluation of the current and proposed 20-year flow and load projections.
- Evaluate the current capacity of the overall solids handling system, incineration system, and its subsystems.
- Evaluate the upgrades that are required to meet the 20-year planning horizon and perform financial analysis.
- Evaluate the air quality treatment systems and anticipated regulatory framework that the incinerator will likely need to meet over the next 20 years.

Among all tasks, the following have the highest impact on the outcome of this effort:

1- Site investigations and evaluation of existing facilities and processes

This task will require significant multi-discipline site investigations to evaluate the performance, processes, equipment and analysis of associated historical data. Tens of hours of data collection and review will be required to identify age deficiencies and assess regulatory criteria capabilities of the WWTP.

2- Liquid stream alternative processes

Perform alternatives analysis for major CIP projects that address the performance, capacity, reliability, redundancy, and regulatory criteria deficiencies of the existing liquid stream processes. The environmental considerations and known impacts to the public, including odor, noise and other parameters will require tens of hours of interlocal stakeholder involvements and efforts. Identifying permitting requirements and analyze effects to the existing WWTP hydraulic profile caused by any of the proposed improvements is another important component of this task.

3- Solids handling alternative processes

Performing a detailed evaluation of the option to keep and upgrade the incarnation process and ancillary solids handling processes. Evaluate CIPs required to increase capacity and replace or repair systems for a 20-year operating life cycle for the incineration system. Evaluate standby systems and costs for when the incinerator is down for service or unexpected shutdowns.

The structures for the buildings are exhibiting substantial deterioration, and this document will guide repairs, replacements, or process driven building changes.

The City has decided to move forward with the evaluations as part of a larger effort to prepare a Facility Plan for the WWTP and has selected RH2 to perform the work. Washington Administrative Code (WAC) 173-240-060 establishes the requirements for Engineering Reports for domestic wastewater treatment facilities. These documents further reference the US Environmental Protection Agency's (EPA) Guidance for Preparing a Facility Plan, EPA-430/9-76-015 and federal rule 40 CFR 35.2030, which identify additional requirements for facility plans. Additionally, the Ecology Criteria for Sewage Works Design (Orange Book) summarizes the requirements for both Engineering Reports and Facility Plans. The additional requirements for a facility plan allow for the projects identified in the plan to be available for federal funding through the EPA.

FUNDING:

Utility Fund 412. The funds for this contract were included in the recent Rate Study and Analysis that set our Utility Rates for the 2020-2025 period.

KEY FEATURES AND VISION ALIGNMENT:

The Lynnwood Community Vision states that the City is to be a welcoming city that builds a healthy and sustainable environment.

The WWTP Facility Plan project supports that vision and results in an important improvement to the City's infrastructure that links City of Lynnwood programs, policies, comprehensive plans, mission and ultimately the Community Vision. The project will also result in a group of Capital Improvement Projects (CIPs) that will enhance functionality and efficiency of City's Wastewater Treatment Plant and prepare the City with the ability to handle population growth for the next 20 to 30 years.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.1-C

CITY OF LYNNWOOD Executive

TITLE: Voucher Approval

DEPARTMENT CONTACT: Leah Jensen

ACTION:

Approve Claims and Payroll in the amount of \$2,246,578.18 and \$2,340,908.70 respectively.

BACKGROUND:

DOCUMENT ATTACHMENTS

Description:	Type:
No Attachments Available	

CITY COUNCIL ITEM 90.3-A

CITY OF LYNNWOOD Public Works

TITLE: Ordinance: Franchise Agreement with Level 3 for Operations of Communication Facilities

DEPARTMENT CONTACT: Les Rubstello

SUMMARY:

Level 3 Communications (same parent company as CenturyLink) is seeking a franchise agreement to deploy and operate communication transmission facilities (dark fiber) within the City.

ACTION:

Approve the attached Ordinance No. _____ granting a non-exclusive Franchise to Level 3 to deploy and operate communications facilities with the City rights of way.

BACKGROUND:

Level 3 Communications (owned by the same parent company as CenturyLink) approached the City of Lynnwood to secure a franchise agreement allowing them to deploy and operate facilities to support communication services (dark fiber) in our area.

We started negotiations with the City's standard telecommunications franchise that was written mutually with Public Works, the City Attorney, and the Purchasing Manager. The sections specific to wireless communications were deleted and minor changes were made to Use of Right of Way, Undergrounding, Relocation, Bonding, Permits and Auditing. The section of Termination, Revocation, and Forfeiture was rewritten at the franchisee's request. The main conditions for the City are that the franchisee must maintain their infrastructure in the roadway to not be a hazard, and that they must relocate for a City project at their cost, were maintained.

The franchisee will pay the one-time standard administrative fee of \$2500 for setting up the franchise. They also agree that their service falls under the City's definition of telephone services and agree to pay utility tax upon their operations.

FUNDING:

This agreement requires Level 3 to compensate the City \$2,500 for administrative costs of this franchise.

ADMINISTRATION RECOMMENDATION:

Approve the Ordinance.

DOCUMENT ATTACHMENTS

Description:

[Level 3 Franchise](#)

Type:

Backup Material

CITY OF LYNNWOOD

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON,
GRANTING A NON-EXCLUSIVE FRANCHISE TO LEVEL 3
COMMUNICATIONS, LLC TO INSTALL, OPERATE AND MAINTAIN
TELECOMMUNICATIONS FACILITIES WITHIN THE CITY;
PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH
RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN
EFFECTIVE DATE.

WHEREAS, Level 3 Communications, LLC, a Delaware limited liability company with its principal offices at 1028 Eldorado Blvd., Broomfield, CO 80021 ("Franchisee") has requested that the City Council grant it a non-exclusive telecommunications services franchise to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City, consisting of telecommunication lines, conduit, fiber, cables, manholes, handholes, and all necessary appurtenances ("System");; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for use of public streets, roads, bridges, and other public rights-of-way, above and below the surface of the ground, for antennas, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, cut-off switches, electric meters, coaxial cables, fiber optic cables, telecom demarcation boxes and related materials, equipment, poles, conduits, tunnels, towers, structures, pipes, wires, and appurtenances and other facilities for the transmission and distribution of electrical energy, signals and other methods of communication; and

WHEREAS, the City has determined that it is in the best interests of the City and in the best interests of the health, safety, and welfare of the Lynnwood community and the general public to grant this non-exclusive Franchise to Franchisee; now therefore,

THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following words, terms and phrases shall have the meanings stated in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

1 **1.1** "Affiliate" means any corporate entity that Franchisee owns or controls, is
2 owned or controlled by, or is under common ownership with Franchisee. Any entity in
3 which Franchisee has ownership of 5% or more of the equity ownership, (either voting,
4 control or value), or in which Franchisee has actual working control, in whatever manner
5 exercised, will also be deemed an Affiliate. Both the entity owned or controlled, and the
6 entity owning or controlling, shall be considered Affiliates of each other.

7 **1.2** "City" means the City of Lynnwood, Washington, and all the territory within its
8 present and future boundaries and including any area over which the City exercises
9 jurisdiction.

10 **1.3** "Communications Service" means any telecommunications services,
11 telecommunications capacity, wireless telecommunications services, or dark fiber,
12 provided by the Franchisee using its Facilities, either directly or by its Affiliates,
13 including, but not limited to, the transmission of voice, data, or other electronic
14 information, by wire, optical cable, radio frequency spectrum, or other similar means.
15 For purposes of this subsection, "information" means knowledge or intelligence
16 represented by writing, signs, signals, pictures, sounds, or any other symbols. For
17 purposes of this Franchise, Communications Service excludes over-the-air transmission
18 of broadcast television and broadcast radio signals. Further, Communications Services
19 shall not include the provision of cable services or open video services as defined in the
20 Communications Act of 1934, as amended, for which a separate franchise would be
21 required.

22 **1.4** "Cost" means any actual, reasonable, and documented costs, fees, or expenses,
23 including but not limited to attorneys' fees.

24 **1.5** "Facilities" means the Franchisee's telecommunications system constructed and
25 operated within the City's Right-of-Ways, including all antennas, transmitters, receivers,
26 equipment boxes, backup power supplies, power transfer switches, cut-off switches,
27 electric meters, telecom demarcation boxes, poles, and related materials, equipment,
28 coaxial cables, fiber optic cables, amplifiers, conductors, lines, wires, conduits, ducts,
29 manholes, pedestals, and any associated converters, equipment or other appurtenances
30 and facilities, for the purpose of providing Communications Services under this
31 Franchise.

32 **1.6** "FCC" means the Federal Communications Commission, or any successor
33 governmental agency.

34 **1.7** "Franchise" means the non-exclusive rights, privileges, and authority granted to
35 Franchisee to use its Facilities in the City's Rights-of-Way pursuant to this Ordinance.

36 **1.8** "Person" means any individual, corporation, partnership, association, joint
37 venture, or organization of any kind and the lawful trustee, successor, assignee,
38 transferee, or personal representative thereof.

39 **1.9** "Right-of-Way" means the surface of, and any space above or below, any land
40 previously or hereafter acquired by or dedicated to the public or the City for purposes in

1 whole or in part of pedestrian or vehicular travel, including but not limited to public
2 streets, roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements, and
3 similar public property located within the Service Area.

4 **1.10** "Service Area" means the present municipal boundaries of the City and shall
5 include any future additions thereto by annexation or other legal means.

6 **SECTION 2. GRANT.**

7 **2.1 Grant of a Non-Exclusive Franchise.**

8 2.1.1 The City hereby grants to Franchisee the non-exclusive right, privilege, and
9 authority to use and occupy the Rights-of-Way for the purpose of providing
10 Communications Services, including without limitation the right to lawfully install,
11 remove, construct, erect, operate, use, maintain, relocate, and repair Facilities in, along,
12 under, and across the Rights-of-Way subject to the terms and conditions of this
13 Ordinance. In order to provide any other services over the Facilities, the Franchisee
14 shall be required to obtain any additional governmental authorizations required by law.

15 2.1.2 In exercising its rights under this Ordinance, Franchisee shall comply with
16 all lawfully enacted City Codes, ordinances, standards, procedures, and regulations;
17 provided that, in the event of conflict, the provisions of this Franchise shall control. The
18 provisions of this Franchise are subject to the lawful exercise of the City's police powers
19 upon reasonable notice to Franchisee. In accepting this Franchise, the Franchisee
20 acknowledges that its rights hereunder are subject to the police power of the City to
21 adopt and enforce, from time to time and in the manner it deems reasonable, general
22 ordinances necessary for the safety, health, and welfare of the public. This Franchise
23 shall not be interpreted to prevent the City from imposing additional lawful conditions,
24 including lawful additional compensation conditions for use of the Rights-of-Way,
25 should Franchisee provide service other than Communications Service. Franchisee
26 agrees to comply with all applicable laws that are now or may in the future be enacted
27 by the City pursuant to such police power.

28 2.1.3 The authority granted herein to Franchisee is a limited authorization to
29 occupy and use the Rights-of-Way for providing Communications Services, and shall not
30 include or be a substitute for:

31 a. Any other permit or authorization required for the privilege of
32 transacting and carrying on a business within the City, including but not limited to a City
33 business license; or

34 b. Any permit, agreement, authorization, or condition that may be
35 required by the City for using the Right-of-Way in connection with operations on or in
36 the Right-of-Way or public property, such as Right-of-Way Use Permits and approved
37 traffic control plans.

38 2.1.4 This Franchise only conveys limited rights and interests as to those Rights-
39 of-Way in which the City has an actual interest. It is not a warranty of title or interest,
40 nor does it provide the Franchisee with any representation as to any location of a City

1 Right-of-Way or the nature of the City's interest in any Right-of-Way. No right to install
2 any facility, infrastructure, wires, lines, cables, or other equipment, on any City property
3 other than a Right-of-Way, or upon private property without the owner's consent, or
4 upon any public or privately owned utility poles or conduits is granted herein.

5 2.1.5 Nothing in this Franchise is a bar to the imposition of any lawful condition
6 with respect to the Franchisee's delivery of any services other than Communications
7 Services, nor does this Franchise relieve the Franchisee from obtaining authorization
8 from the City for providing any other such services.

9 2.1.6 This Franchise shall not be construed as to deprive the City of any rights or
10 privileges which it now has or may hereafter have to regulate the use and control of the
11 Rights-of-Way, and public property. Nothing in this Franchise shall limit nor expand
12 either party's right of eminent domain under State law. If at any time the City exercises
13 its authority to vacate all or any portion of any Right-of-Way, the City shall not be liable
14 for any damages or loss to Franchisee by reason of such vacation. The City may, upon
15 ninety (90) days' written notice to Franchisee, terminate this Franchise with respect to
16 such vacated area.

17 2.1.7 The City specifically reserves the right to grant, at any time, such additional
18 franchises for other similar systems to the Franchisee or to other persons or entities, as
19 the City deems appropriate; provided, however, such additional grants shall not operate
20 to materially modify, revoke, interfere with, or terminate any rights previously granted
21 to Franchisee. The grant of any additional franchise shall not of itself be deemed to
22 constitute a modification, revocation, or termination of rights previously granted to
23 Franchisee.

24 2.1.8 This Franchise does not establish any priority for the use of the Rights-of-
25 Way by Franchisee or by any present or future franchisees or other permit holders. In
26 the event of any dispute as to the priority of use of the Rights-of-Way, the first priority
27 shall be to the City in the performance of its various functions, the second priority shall
28 be to the public generally, and thereafter, as between franchisees and other permit
29 holders, as reasonably determined by the City in the exercise of its powers, including the
30 police power and other powers reserved to and conferred on it by the State of
31 Washington. Franchisee shall have priority as to positioning and location of its Facilities
32 with respect to any of its authorized Facilities installed prior to construction and/or
33 installation of any third-party facilities.

34 2.1.9 To the extent that any of the Rights-of-Way within the Franchise Area are a
35 part of the State highway system ("State Highways") and are governed by the provisions
36 of Chapter 47.24 RCW and applicable Washington State Department of Transportation
37 regulations, Franchisee shall comply with said requirements in addition to local
38 ordinances and other applicable regulations. Franchisee shall correct any noncompliant
39 facilities identified by the City or by any other local, State or federal governmental
40 entity.

41 **2.2 Term of Franchise.**

1 The term of this Franchise shall be for a period of ten (10) years from the date of
2 acceptance as set forth in Section 8.6 (Acceptance), unless sooner terminated or
3 revoked. This Franchise shall not renew unless and until the City and Franchisee reach
4 agreement on a renewal and said agreement is approved by ordinance of the City
5 Council. In the event that agreement is not reached, this Franchise shall terminate at
6 the end of the then current term. Nothing in this Section prevents the parties from
7 reaching agreement on renewal provisions earlier than the conclusion of any then
8 current term.

9 **2.3 Non-Exclusive.**

10 This Franchise shall be non-exclusive, and subject to all prior rights, interests,
11 easements, or licenses granted by the City or its predecessors to any Person to use any
12 property, Right-of-Way, easement, right interest, or license. The City may at any time
13 grant authorization to use the Right-of-Way for any purpose not incompatible with the
14 Franchisee's authority under this Franchise and for such additional franchises as the City
15 deems appropriate.

16 **2.4 Effect of Acceptance.**

17 By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal
18 right to issue and enforce the Franchise; accepts and agrees to comply with each and
19 every provision of this Franchise to the extent it remains lawful; and agrees that the
20 Franchise was granted pursuant to processes and procedures consistent with applicable
21 law.

22 **SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.**

23 **3.1 Use of Rights-of-Way.**

24 Franchisee shall not erect, install, construct, repair, replace, or maintain its Facilities in
25 such a fashion as to inconvenience the public use of the City's Rights-of-Way or to
26 adversely affect the public health, safety or welfare. If the City in its reasonable
27 judgment determines that any portion of the Franchisee's Facilities inconveniences the
28 public use of the Rights-of-Way or adversely affects the public health, safety or welfare,
29 City shall provide notice to Franchisee. Following reasonable advance written notice of
30 not less than sixty (60) days, Franchisee at its expense shall modify its Facilities or take
31 such other actions as the City may determine are in the public interest and reasonably
32 necessary to remove or alleviate the inconvenience or adverse affect, and Franchisee
33 shall do so within the time period established by the City. Franchisee may, subject to
34 the terms of this Franchise, erect, install, construct, repair, replace, reconstruct, and
35 retain in, on, over, under, upon, across, and along the Rights-of-Way within the City
36 such poles, antennas, transmitters, receivers, equipment boxes, backup power supplies,
37 power transfer switches, cut-off switches, electric meters, telecom demarcation boxes
38 and related materials, equipment, lines, coaxial cables, fiber optic cables, conductors,
39 ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and
40 other appurtenances and equipment as are necessary to the provision of its
41 Communications Services.

1 **3.2 Construction or Alteration.**

2 Franchisee shall in all cases comply with all lawfully-enacted City laws, resolutions and
3 regulations regarding the acquisition of permits and/or such other items as may be
4 reasonably required in order to construct, alter, or maintain its Facilities and to provide
5 Communications Services. All work authorized and required under this Franchise shall
6 be accomplished in a safe, thorough, and workmanlike manner, or better. All
7 installations of equipment shall be durable and installed in accordance with current
8 engineering standards.

9 **3.3 Non-Interference.**

10 Franchisee shall exert commercially reasonable efforts to construct and maintain its
11 Facilities so as not to interfere with other use of the Rights-of-Way. Franchisee shall,
12 where possible, in the case of above ground lines or facilities, make use of existing poles
13 and other facilities available to Franchisee.

14 **3.4 Consistency with Designated Use.**

15 Notwithstanding any other provision of this Franchise, no Right-of-Way shall be used by
16 the Franchisee if the City determines that such use is inconsistent with the terms,
17 conditions, or provisions by which such Right-of-Way was created or dedicated, or
18 presently used under City, County, State or federal laws.

19 **3.5 Undergrounding.**

20 Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all
21 of its Facilities which are located or are to be located above or within the Rights-of-Way
22 of the City only in the following cases:

23 (a) All other existing utilities are required to be placed underground pursuant to
24 a public project; and

25 (b) When required by ordinances, resolutions, regulations, or policy of the City
26 or applicable State or federal law.

27 Notwithstanding the foregoing, Franchisee shall not be required to place underground
28 antennas, equipment cabinets, cabling and other equipment that must be above-ground
29 to operate.

30 3.5.1 Whenever the City may require the undergrounding of aerial utilities as
31 provided under this section, Franchisee shall underground its aerial Facilities (excluding
32 antennas, equipment cabinets, cabling and other equipment that must be above-ground
33 to operate) in the manner specified by the City, concurrently with and in the area of the
34 other affected utilities. The location of any such relocated and underground Facilities
35 shall be approved by the City, following consultation with the Franchisee. Where other
36 utilities are present and involved in the undergrounding project, Franchisee shall only be
37 required to pay its fair share of the common costs borne by all utilities, in addition to
38 the costs specifically attributable to the undergrounding of Franchisee's Facilities.
39 "Common costs" shall include necessary costs not specifically attributable to the

1 undergrounding of any particular facility, such as costs for common trenching and utility
2 vaults. "Fair share" shall be determined for a project on the basis of the number and
3 size of all other utility facilities being undergrounded.

4 3.5.2 If an ordinance is passed creating a local improvement district which
5 involves placing underground utilities including Franchisee's Facilities which are
6 currently located overhead, Franchisee shall participate in such underground project
7 and shall remove any Franchisee-owned poles, cables, overhead wires and other
8 facilities (excluding antennas, equipment cabinets, cabling and other equipment that
9 must be above-ground to operate) within such district if requested to do so and place
10 such facilities underground. If such undergrounding of Franchisee's Facilities is part of
11 such a project, Franchisee shall not be responsible for the costs, and the costs thereof
12 shall be included in such local improvement district.

13 3.5.3 In those areas and portions of the City where the transmission or
14 distribution facilities of the utility(ies) providing telephone service and the utility(ies)
15 providing electric service are underground or hereafter are placed underground, then
16 the Franchisee shall likewise construct, operate, and maintain all of its transmission and
17 distribution facilities (excluding antennas, equipment cabinets, cabling and other
18 equipment that must be above-ground to operate) underground. Amplifiers and
19 connectors in Franchisee's transmission and distribution lines may be in appropriate
20 enclosures upon or above the surface of the ground in locations approved by the
21 City. Upon sufficient notice, work shall be done at the same time as other facilities that
22 are placed underground and all work shall be done consistent with City regulations and
23 to minimize impact on streets and neighborhoods.

24 3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest
25 extent possible for undergrounding. Cable and conduit shall be utilized which meets the
26 highest industry standards for performance and resistance to interference or damage
27 from environmental factors. Franchisee shall use and construct, in conjunction and
28 coordination with other utility companies or providers, common trenches for
29 underground construction wherever available and possible.

30 **3.6 Construction in Right-of-Way.**

31 In cases where the Franchisee's facilities will not be placed underground, the Franchisee
32 shall utilize existing poles wherever possible. In cases where Franchisee's Facilities will
33 be placed underground, whenever it is possible and reasonably and financially
34 practicable to joint trench or share bores and cuts, Franchisee shall work with other
35 providers (such as telecommunications, cable, gas, electric utilities, or the City),
36 licensees, permittees, and franchisees to reduce as far as possible the number of Right-
37 of-Way disturbances.

38 **3.7 Maintenance and Restoration.**

39 3.7.1 Restoration. In case of disturbance of any Right-of-Way or public
40 improvement by Franchisee, Franchisee shall, at its own cost and expense and in
41 accordance with the requirements of the City, restore such Right-of-Way or public

1 improvement to substantially the same condition as existed before the work involving
2 such disturbance took place, less ordinary wear and tear, as reasonably determined by
3 the City and in accordance with any applicable City public works construction standards.
4 This includes vegetation that is damaged by or removed during the Right-of-Way
5 disturbance. All requirements of this Section pertaining to public property shall also
6 apply to the restoration of private easements and other private property, but only to
7 the extent such restoration is related to work in the Right-of-Way. Franchisee shall
8 perform all restoration work promptly. If Franchisee fails, neglects, or refuses to make
9 restorations as required under this Section, then the City may (but is not required to) do
10 such work or cause it to be done, and Franchisee shall pay the cost thereof to the City
11 within 60 days of the City providing an itemized list of the costs and expenses incurred
12 in performing such work. If Franchisee causes any damage to private property in the
13 process of restoring facilities related to work in the Right-of-Way, Franchisee shall repair
14 such damage, ordinary wear and tear excepted. Franchisee shall warrant any
15 restoration work performed under this Franchise, including the maintenance of any
16 landscaping or vegetation installed as part of the restoration work, for a period of two
17 years.

18 3.7.2 Maintenance. Franchisee shall maintain all above ground improvements
19 that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid
20 interference with the City's ability to maintain the Right-of-Way, Franchisee shall
21 provide a clear zone of five feet on all sides of such improvements. If Franchisee fails to
22 comply with this provision, and by its failure, property is damaged, then Franchisee shall
23 be responsible for all damages to the extent caused thereby, including restoration.

24 3.7.3 Disputes. In any dispute over the adequacy of restoration or maintenance
25 under this Section, the City's Public Works Department shall have the authority, in the
26 exercise of its reasonable discretion, to determine the adequacy of the restoration or
27 maintenance.

28 **3.8 Relocation.**

29 3.8.1 City Property. If during the term of the Franchise the City determines
30 that it is necessary for purposes of public welfare, health, or safety, to alter, repair,
31 realign, abandon, improve, vacate, reroute, or change the grade of any street, public
32 way, or other public property; or to construct, maintain, or repair any public
33 improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire
34 conduit, pipe, line, pole, wire-holding structure, or other facility, including a facility used
35 for the provision of utility or other services or transportation of drainage, sewage, or
36 other liquids, Franchisee shall, upon request and with as much advance notice as is
37 feasible under the circumstances (but in no event less than ninety (90) days), except as
38 otherwise hereinafter provided, at its sole expense remove or relocate as necessary its
39 poles, wires, cables, underground conduits, vaults, pedestals, manholes, and any other
40 facilities which it has installed. However, pursuant to RCW 35.99.060(4), to the extent
41 that a project requiring the relocation of Franchisee's Facilities is primarily for private

1 benefit, then the private party or parties shall reimburse the Franchisee for the costs of
2 relocation in the same proportion to their contribution to the costs of the project.

3 3.8.2 Utilities and Other Franchisees. If during the term of the Franchise
4 another entity which holds a franchise or any utility requests Franchisee to remove or
5 relocate such facilities to accommodate the construction, maintenance or repair of the
6 requesting party's facilities, or their more efficient use, or pursuant to an agreement
7 between Franchisee and such requesting party to "make ready" the requesting party's
8 facilities for use by others, or because Franchisee is using a facility which the requesting
9 party has a right or duty to remove, Franchisee and such requesting party shall mutually
10 negotiate the actions required in connection with the "make ready" relocation or
11 removal. The companies involved shall decide among themselves who is to bear the
12 cost of "make ready" removal or relocation, provided that the City shall not be liable for
13 such costs.

14 3.8.3 Notice to remove or relocate. Any City request to Franchisee to remove
15 or relocate its facilities shall give Franchisee reasonable advance written notice of no
16 less than ninety (90) days to Franchisee advising Franchisee of the date or dates removal
17 or relocation is to be undertaken; provided that the City may provide whatever notice is
18 reasonable under the circumstances in emergencies or in cases where public health and
19 safety or property is immediately endangered.

20 3.8.4 Failure by Franchisee to remove or relocate. If, after receipt of all
21 required notices, Franchisee fails, neglects or refuses to remove or relocate its facilities
22 as directed by the City; or in emergencies or where public health and safety or property
23 is endangered, the City may do such work or cause it to be done, and the cost thereof to
24 the City shall be paid by Franchisee within sixty (60) days after receipt of an invoice
25 therefor. If Franchisee fails, neglects, or refuses to remove or relocate its facilities as
26 directed by another franchisee or utility, that franchisee or utility may do such work or
27 cause it to be done, and if Franchisee would have been required to pay for the cost of
28 performing such work under the provisions of this Agreement, the cost thereof to the
29 party performing the work or having the work performed shall be paid by Franchisee.

30 3.8.5 If in the sole but reasonable opinion of the City Public Works Director,
31 damage to the public Right-of-Way resulting from damage or disturbance during the
32 construction, operation, or maintenance of the Franchisee's Facilities requires
33 immediate repair, the City may, after providing reasonable notice to Franchisee and an
34 opportunity to cure, perform such repairs, at the cost of the Franchisee. In such event,
35 the City will endeavor to notify the Franchisee of the immediate repairs needed. The
36 Franchisee shall pay to the City the City's costs, including administrative costs related to
37 such repairs within sixty (60) days of the date of written notice of the costs to the
38 Franchisee.

39 3.8.6 Procedure for removal of Facilities. Franchisee shall not remove any
40 underground facilities which requires trenching or other opening of the streets along
41 the facilities to be removed, except as hereinafter provided. Franchisee may remove
42 any underground facilities from the streets which have been installed in such a manner

1 that it can be removed without trenching or other opening of the streets. Subject to
2 applicable law, Franchisee shall remove, at its sole cost and expense, any underground
3 facilities by trenching or opening of the streets along the extension thereof or otherwise
4 which is ordered to be removed by the City based upon a determination, in the
5 reasonable discretion of the City, that removal is required in order to eliminate or
6 prevent a hazardous condition. Usable underground cable and conduit in the streets
7 that is not removed as required in this subsection shall be deemed abandoned and title
8 thereto shall vest in the City at no cost to the City.

9 **3.9 Movement of Buildings.**

10 If the Franchisee has installed wires in support of its operations under this franchise, the
11 Franchisee shall, on the request of any person holding a building moving permit issued
12 by the City, temporarily raise or lower its wires to permit the moving of such
13 building. Franchisee shall be entitled to ninety- (90) days' notice to arrange the raising
14 or lowering of the wires. Franchisee may charge a reasonable fee no greater than its
15 actual costs, including administrative costs, incurred in raising or lowering its wires, for
16 this service to the person or entity holding a building permit and may request that the
17 costs be paid in advance.

18 **3.10 City Right to Inspect and Cost Recovery.**

19 The City shall have the right to inspect all work performed by Franchisee in, on or above
20 City Rights-of-Way, whether during the performance of such work or after completion
21 so long as such inspection does not disrupt Franchisee's system operation. To the
22 extent that the City is required to perform any inspections, maintenance, or repairs to
23 City streets, Right-of-Way, or other City property due to Franchisee's use thereof, the
24 City shall be entitled to recover the costs and expenses to the extent incurred therefor
25 from Franchisee and such costs and expenses shall be payable on demand within thirty
26 (30) days after Franchisee receives an invoice therefor. In the event that the City incurs
27 any costs or expenses for designing, installing, repairing, or altering any City facilities
28 that would not have occurred but for Franchisee's exercise of the rights granted under
29 this Franchise, the City may bill Franchisee for reimbursement of such costs and
30 expenses and such shall be immediately due and payable to the City. Any such recovery
31 of City costs or reimbursements of such costs shall not be an off-set or credit against any
32 Franchise Fee to be paid to the City by the Franchisee.

33 **3.11 Construction Standards.**

34 3.11.1 All work authorized or required under this Franchise shall be done in a
35 safe, thorough, and workmanlike manner, or better. All installations of equipment shall
36 be durable and installed in accordance with current professional engineering
37 standards. Prior to commencement of construction or any work being performed in any
38 Right-of-Way, all of such work shall be conducted pursuant to engineering plans
39 submitted by the Franchisee to the City for review and approval, which may be
40 conditional approval, by the City Public Works Department. Franchisee shall take
41 prompt corrective action if, after reasonable notice from the City, it or the City finds that

1 any Facilities are not operating in a manner consistent with approved plans, or if it or
2 the City finds that facilities and equipment do not comply with the requirements of this
3 Franchise or applicable law, the Lynnwood Municipal Code or any permit requirements.

4 3.11.2 Franchisee shall comply with all applicable City construction and other
5 codes, ordinances, and regulations, including without limitation, all building and zoning
6 codes.

7 3.11.3 Any erection of poles, antennas, wires, cables, and other installations,
8 upon the poles of the Franchisee located in the Right of Way or upon the poles of others
9 located in the Right of Way, shall be done only in accordance with a plan or maps first
10 submitted to and approved by the City or other person designated by the City, which
11 approval shall not be unreasonably withheld, conditioned, or delayed. Antenna
12 supporting structures (towers) shall be designed for the proper loading as specified by
13 the Electronics Industries Association (EIA), as those specifications may be amended
14 from time to time, and shall meet all requirements and regulations adopted by the
15 Federal Communications Commission (FCC). Antenna supporting structures (towers)
16 shall be painted, lighted, erected, and maintained in accordance with all applicable rules
17 and regulations of the Federal Aviation Administration, the FCC, and all other applicable
18 federal, State, and local codes or regulations. Any repair work or replacement work
19 performed in the Right of Way shall be done under the supervision of the City and only
20 after permission from the City is received.

21 3.11.4 Prior to placing any underground facilities, Franchisee shall, if required by
22 applicable laws, join and maintain membership in good standing with the Utility
23 Coordinating Council One Call Center or other similar or successor organization which is
24 designated to coordinate underground equipment locations and installations.
25 Franchisee represents that it is familiar with Chapter 19.122 RCW (Washington State's
26 "Underground Utilities" statute) and understands and will comply with local procedures
27 and practices relating to the one call locator service program.

28 3.11.5 Franchisee shall comply with any generally applicable ordinances, rules,
29 regulations, and policies of the City regarding geographic information systems mapping
30 for users of the Right-of-Way; provided, that all similarly situated users of the Right-of-
31 Way are also required to comply.

32 **3.12 Notice of Construction.**

33 3.12.1 If at any time the Franchisee intends to perform construction work in any
34 Right-of-Way, the Franchisee shall obtain a Right-of-Way Permit from the City and shall
35 provide the City with notice before commencing any such work as required by the Right-
36 of-Way Permit application process.

37 3.12.2 The City may establish requirements for advance notification to residents
38 adjacent to the proposed construction areas to be provided by the Franchisee, and
39 Franchisee shall comply with such advance notification requirements, provided such
40 requirements are imposed in a non-discriminatory, competitively neutral manner to all
41 persons or entities using the City's Rights-of-Way.

1 **3.13 Safety Requirements.**

2 3.13.1 The Franchisee shall, at all times, employ industry standards of care and
3 shall install and maintain and use commonly accepted methods for preventing failures
4 and accidents which are likely to cause damage, injuries, or nuisances to the public. All
5 structures and all lines, equipment, and connection in, over, under, and upon the
6 streets, sidewalks, alleys, and public ways or places of the Service Area, wherever
7 situated or located, shall at all times be kept and maintained in a safe
8 condition. Franchisee shall comply with all federal, State, and City safety requirements,
9 rules, regulations, laws and practices, and employ all necessary devices as required by
10 applicable law during the construction, operation, maintenance, upgrade, repair, or
11 removal of its Facilities. By way of illustration and not limitation, Franchisee shall also
12 comply with the National Electric Code, National Electrical Safety Code, FCC regulations,
13 and Occupational Safety and Health Administration (OSHA) Standards.

14 3.13.2 If an unsafe condition is found to exist, the City agrees to give Franchisee
15 notice of such condition and afford Franchisee a reasonable opportunity to repair the
16 same. If Franchisee fails to start to make the necessary repairs and alterations within
17 the time frame specified by the City, then after notice to the Franchisee, the City may
18 make such repairs or contract for them to be made. All costs, including administrative
19 costs, incurred by the City in repairing any unsafe conditions after such applicable notice
20 periods, shall be borne by Franchisee. The Franchisee shall pay to the City all of the
21 City's actual costs, including administrative costs, incurred as a result of circumstances
22 herein within sixty (60) days of the date of the written notice of the costs that is
23 delivered to the Franchisee. If the Franchisee fails to comply with the time frames
24 herein, this Franchise shall terminate without further action required.

25 **3.14 Permits Required for Construction.**

26 3.14.1 Prior to doing any work in the City, Franchisee shall apply for, and obtain,
27 appropriate permits from the City. As part of the permitting process, the City may
28 impose such conditions and regulations as are necessary for the purpose of protecting
29 any Rights-of-Way, the proper restoration of Rights-of-Way and structures, the
30 protection of the public, and the continuity of pedestrian or vehicular traffic, or as may
31 be required by law, ordinance, codes, or regulations. Such conditions may also include
32 requiring the provision of a construction schedule and maps showing the location of the
33 facilities to be installed in the Right-of-Way. Franchisee shall pay all applicable fees for
34 the requisite City permits, reviews, and/or approvals required of or received by
35 Franchisee. In the event that emergency repairs are necessary, Franchisee shall
36 immediately notify the City of the need for such repairs. Franchisee shall apply for
37 appropriate permits within five (5) business days after discovery of the
38 emergency. During emergencies, the City may move Franchisee's Facilities without prior
39 notice.

1 3.14.3 In the event of any emergency in which any of Franchisee's Facilities
2 break or are damaged, or if the Franchisee's construction area is otherwise in such a
3 condition as to immediately endanger the property, life, health, or safety of any person,
4 the Franchisee shall immediately take proper emergency measures to repair its
5 Facilities, to cure or remedy the dangerous condition, without first applying for and
6 obtaining City permits otherwise required for said work; provided, that the Franchisee
7 shall immediately notify the City of said condition and of the emergency work, and shall
8 obtain all necessary permits as promptly as possible after the emergency work is
9 performed, and in any event no later than the second business day following the
10 discovery of the condition requiring the emergency work.

11 **3.15 Tree Trimming.**

12 In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or
13 other natural growth necessary to access and maintain its Facilities immediately upon
14 determining that such an emergency exists and prior to engaging in such activity. Upon
15 receipt of such notice, the City may inspect such circumstance prior to the removal of
16 the emergency condition. In non-emergency conditions, Franchisee may, at its own
17 expense, trim trees within the Right-of-Way or other natural growth overhanging any of
18 its installed Facilities to prevent branches from coming in contact with the Franchisee's
19 wires, cables, or other equipment upon twenty (20) days' notice of the actual trees and
20 other natural growth that is intended to be affected in non-emergency situations, and
21 upon approval of the City Public Works Department, which shall not be unreasonably
22 withheld, and subject to the requirement to obtain a Right-of-Way Use Permit and
23 complying with any and all conditions of that Permit. Nothing herein grants the
24 Franchisee any authority to act on behalf of the City or to enter upon any private
25 property, or to trim any tree or natural growth not owned by the City. The Franchisee
26 shall be solely responsible and liable for any damage to any third-parties' trees or
27 natural growth, and in addition to the terms and conditions of Section 7, the Franchisee
28 shall indemnify, defend, and hold harmless the City from claims of any nature to the
29 extent arising from any act or negligence of the Franchisee with regard to tree and/or
30 natural growth trimming, damage, and/or removal. Franchisee shall reasonably
31 compensate the City or the property owner for any damage caused by such trimming,
32 damage or removal. The Franchisee, may, at their own discretion, but in a manner and
33 of a style reasonably approved by the City or property owner, provide replacement of
34 any trees or shrubbery damaged as a result of actions taken by the Franchisee in lieu of
35 compensation.

36 **3.16 Reservation of Rights.**

37 Nothing in this Franchise shall limit, waive, release, or terminate any rights or interests
38 of the City in its property and/or Right-of-Way, including but not limited to the City
39 retaining all right to sewer, plank, pave, grade, alter, repair, vacate, and improve and/or
40 work upon, under, or above any public Rights-of-Way, and, further the City shall retain
41 its right to grant Franchise rights or similar rights to others, and the City shall not be
42 liable for damage resulting to the Franchisee by reason of or as a result of the

1 performance of such work or by the exercise of such rights by the City, unless such
2 damage is caused by the City's negligence or willful misconduct.

3 **SECTION 4. PAYMENTS TO CITY.**

4 **4.1 Recovery of Costs.**

5 4.1.1 Franchisee shall pay an administrative fee to the City for the City's
6 administrative, legal, and other costs incurred in drafting and processing this Franchise
7 and all work related thereto, in an amount up to \$2,500. The City shall provide
8 Franchisee an invoice for the administrative fee in writing, and Franchisee shall pay such
9 amounts within 45 days after receipt of notice. No construction permits shall be issued
10 for the installation of Facilities authorized hereby until such time as the City has
11 received payment of the administrative fee.

12 4.1.2 Franchisee shall be subject to all standard permit fees associated with
13 activities undertaken by Franchisee through the authority granted in this Franchise or
14 under the laws of the City. Where the City incurs costs and expenses for review,
15 inspection, or supervision of activities, including but not limited to reasonable fees
16 associated with attorneys, consultants, City staff, and City Attorney time, undertaken
17 through the authority granted in this Franchise or any ordinances relating to the subject
18 for which a permit fee is not established, Franchisee shall pay such costs and expenses
19 directly to the City. In addition to the above, Franchisee shall, within thirty days (30)
20 upon receipt of a request from the City, reimburse the City for any and all costs the City
21 reasonably incurs in response to any emergency involving Franchisee's Facilities.
22 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an
23 itemized billing for incurred costs, itemized by project, for the Franchisee's
24 proportionate share of all actual, identified expenses incurred by the City in planning,
25 constructing, installing, repairing, altering, or maintaining any City facility as the result of
26 the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses
27 shall include but not be limited to the Franchisee's proportionate cost of City personnel
28 assigned to oversee or engage in any work in the Rights-of-Way as the result of the
29 presence of the Franchisee's Facilities in the Rights-of-Way. Such costs and expenses
30 shall also include the Franchisee's proportionate share of any time spent reviewing
31 construction plans in order to either accomplish the relocation of the Franchisee's
32 Facilities or the routing or rerouting of any utilities so as not to interfere with the
33 Franchisee's Facilities.

34 **4.2 City's Reservation of Rights.**

35 4.2.1 Pursuant to RCW 35.21.860, the City is precluded from imposing a
36 franchise fee on a "telephone business" as defined in RCW 82.16.010, or a "service
37 provider" as defined in RCW 35.99.010, for use of the Right-of-Way, excepting actual
38 administrative expenses directly related to the franchise or any tax authorized by state
39 law. Franchisee hereby warrants that its operations as authorized under this Franchise
40 are those of a "telephone business" as defined in RCW 82.16.010 or a "service provider"

1 as defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under
2 the terms of this Franchise, other than as described herein.

3 4.2.2 Franchisee acknowledges that its operation within the City may constitute
4 a telephone business subject to the utility tax imposed pursuant to Title 3 of the
5 Lynnwood Municipal Code. Franchisee shall pay any and all utility tax due to the City in
6 accordance with the provisions of the City code. Franchisee understands that RCW
7 35.21.870 currently limits the rate of city tax to six percent (6%) of gross receipts from
8 telephone business activities, unless a higher rate is otherwise approved. The parties
9 agree however that nothing in this Franchise shall limit the City's power of taxation as
10 may now or hereafter exist. Franchisee stipulates and agrees that should its business
11 activities be subject to taxation that Franchisee shall pay to the City the rate then
12 applicable to such services under the City's utility tax code, and consistent with state
13 and federal law. This provision does not limit the City's power to amend the City's utility
14 tax code as may be permitted by law.

15 4.2.3 The City reserves its right to impose a franchise fee, in accordance with
16 state or federal law, on Franchisee for purposes other than to recover its administrative
17 expenses, if Franchisee's operations as authorized by this Franchise change such that
18 Franchisee's activities are not those of a "telephone business" as defined in RCW
19 82.16.010, and if there are no statutory prohibitions on the imposition of such fees.

20 **4.3 Acceptance of Payment.**

21 No acceptance of any payment by the City shall be construed as an accord that the
22 amount paid is, in fact, the correct amount, nor shall such acceptance of payment be
23 construed as a release of any claim which the City may have for further or additional
24 sums payable under the provisions of this Franchise. Franchisee's payment to the City
25 shall not be construed as an acknowledgement by the Franchisee that the amount paid
26 is the correct amount and Franchisee reserves the right to subsequently seek to recover
27 any amount of such payments in the event of an erroneous overpayment or for other
28 lawful reasons. The costs of such verification shall be borne solely by the Franchisee.

29 **4.4 Audits and Examinations.**

30 No more than once per calendar year, the City, upon at least thirty (30) days' advance
31 written notice to Franchisee, shall have the right to inspect the books and records of
32 Franchisee for determining the accuracy and completeness of Franchisee's payments
33 made to the City under this Franchise, such as the utility tax.

34 **4.5 Interest and Penalties on Late Payments.**

35 In the event that any payment due to the City under this Franchise, except for utility
36 taxes which shall be governed by applicable provisions of the City code, is not received
37 by the City by the date due, (1) interest shall be charged from such date at the rate of
38 twelve percent (12%) per annum, and (2) in addition, Franchisee shall pay the City an
39 additional amount equal to one percent (1%) of the amount not paid by the date due.

40 **4.6 Taxes and Assessments.**

1 The payments required under this Franchise shall be in addition to any and all taxes,
2 levies, or other assessments which are now or hereafter required to be paid by
3 businesses or utilities by any law of the City, the State, or the federal government,
4 including, without limitation, sales, use, utilities, and business and occupation taxes,
5 business license fees, or other payments. Nothing stated herein shall limit Franchisee's
6 obligation to pay lawful and applicable local, state, or federal taxes, and payment of fees
7 under this Franchise shall not exempt Franchisee from payment of any other lawfully
8 imposed license fee, permit fee, tax, or other charge on the business, occupation,
9 property, or income of Franchisee.

10 **SECTION 5. FRANCHISE RENEWAL, EXTENSION AND TRANSFER.**

11 **5.1 Transfer of Franchise.**

12 5.1.1 This Franchise may not be assigned or transferred (including by operation
13 of law) without the written approval of the City, which approval shall not be
14 unreasonably withheld, conditioned or delayed. Notwithstanding the above, Franchisee
15 may, upon thirty (30) days' written notice to the City, freely assign this Franchise in
16 whole or in part to an Affiliate, including without limitation a parent or subsidiary
17 organization or as part of any corporate financing, reorganization, or refinancing;
18 provided, that the assignee or transferee must have the legal, technical, financial, and
19 other requisite qualifications to own, hold, and operate the Franchisee's Facilities for
20 the purpose of providing Communications Services. The Franchisee shall reimburse the
21 City for all costs and expenses reasonably incurred by the City in considering a request
22 to transfer or assign this Franchise. In the case of transfer or assignment as security by
23 mortgage or other security instrument in whole or in part to secure indebtedness, such
24 approval shall not be required unless and until the secured party elects to realize upon
25 the collateral. No assignment or transfer of this Franchise shall be deemed to occur
26 based on the public trading of the Franchisee's stock.

27 5.1.2 Franchisee may, without the prior written approval of the City: (i) grant
28 an indefeasible right of user interest in the Facilities, or any portion thereof, to another
29 entity; or (ii) offer or provide capacity or bandwidth from the Facilities to another
30 person; provided, that Franchisee at all times retains exclusive control over the Facilities
31 and remains responsible for locating, servicing, repairing, relocating, or removing its
32 Facilities pursuant to the terms of this Franchise and remains in compliance with this
33 Franchise.

34 35 **5.2 Franchise Renewal.**

36 The City and the Franchisee agree that any proceedings undertaken by the City that
37 relate to the renewal of the Franchisee's Franchise shall be governed by and comply
38 with applicable federal, state and local laws, ordinances, and regulations or as otherwise
39 agreed to by the parties.

40 **SECTION 6. VIOLATIONS; ENFORCEMENT.**

1 **6.1 Enforcement.**

2 6.1.1 Notice of Franchisee Violation. In the event that the City believes that the
3 Franchisee has not complied with any terms of the Franchise, the City, at its sole
4 election may informally discuss the matter with Franchisee. If discussions do not lead to
5 resolution of the problem or if the City elects not to informally discuss the matter with
6 the Franchisee, the City shall issue a written Notice of Violation to the Franchisee,
7 stating with particularity the alleged breach, violation or other non-compliance.

8 6.1.2 Franchisee's Right to Cure or Respond. The Franchisee shall have thirty
9 (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the
10 asserted breach, violation or non-compliance and requesting a meeting as provided in
11 section 6.2.1 (ii) cure such default, or (iii) in the event that, by the nature of default,
12 such default cannot be cured within the thirty (30) day period, initiate reasonable steps
13 to remedy such default and notify the City of the steps being taken and the estimated
14 date that they will be completed.

15
16 **6.2 Termination, Revocation, and Forfeiture.** 6.2.1 If the Franchise timely notifies
17 the City that it contests the asserted breach, violation or non-compliance and requests a
18 meeting with the City, the Mayor shall hold a meeting with the Franchisee within
19 fourteen (14) days after such notice, provided that said timeframe may be extended at
20 the sole discretion of the Mayor.

21 6.2.2 If after such meeting, the Mayor determines that the Franchisee is in
22 breach, violation or non-compliance with the Franchise, then the Mayor shall notify the
23 Franchisee of his/her decision in writing within seven (7) days, stating the grounds of the
24 breach, violation, or non-compliance, the required corrective action and time for
25 completing the corrective action, if any, and the penalty for failure to comply with the
26 same, including but not limited to revocation of the Franchise.

27 6.2.3 After receiving the Mayor's written notice of decision, the Franchisee may
28 request a public hearing before the City Council as to whether or not a violation, breach,
29 or non-compliance with the Franchise has occurred. Said request must be made in
30 writing, stating with specificity the reasons why the Franchisee believes that the alleged
31 non-compliance has not occurred, and delivered to the City Clerk within fourteen (14)
32 days of receipt of the Mayor's decision.

33 6.2.4 If the Franchisee does not request a public hearing before the City Council
34 under Section 6.2.3 above and the Franchisee fails to complete required corrective
35 action within the specified time, then at the next available meeting, the City Council
36 shall pass an ordinance declaring the Franchise revoked and terminated, and any
37 security or bonds shall be forfeited to the City. If the Franchisee does request a public
38 hearing before the City Council under Section 6.2.3 above, the City Clerk shall cause the
39 public hearing to be held at the next available City Council meeting, provided that the
40 Franchisee shall be provided at least thirty (10) days' notice of such hearing.

1 6.2.5 At the City Council public hearing, the City shall have the burden of proof
2 that a violation, breach, or non-compliance with the Franchise has occurred, and must
3 demonstrate that a preponderance of evidence supports the conclusion that there is a
4 violation or breach of the Franchise and that such violation or breach was not timely
5 cured as required in this Franchise.

6 6.2.6 If the City Council upholds the Mayor's decision that the Franchisee is in
7 breach, violation, or non-compliance, then the City Council shall immediately pass an
8 ordinance declaring the Franchise revoked and terminated, and any security or bonds
9 shall be forfeited to the City. Said revocation ordinance shall include findings of fact and
10 conclusions derived from those facts which support the decision of the City Council;
11 provided, that the City Council may adopt the findings and conclusions of the Mayor.

12 6.2.7 The Franchisee shall be bound by the decision of the City Council, unless
13 an appeal is filed to a court of competent jurisdiction within thirty (30) days of the date
14 of the Council's decision.

15 **6.3 Failure to Timely Cure.**

16 6.3.1 If the Franchisee has not contested the asserted breach, violation, or non-
17 compliance and fails to timely cure the breach, violation, or non-compliance under
18 Section 6.1.2 above, then in addition to any other remedy at law or equity, or provided
19 for in this Franchise, the City may revoke the Franchise. Said revocation shall be
20 effective immediately after the delivery of a written notice of revocation executed by
21 the Mayor stating the grounds of the breach, violation, or non-compliance with the
22 Franchise. If the Franchisee has contested the asserted breach, violation, or non-
23 compliance and the City has determined, as provided in Section 6.2, that the Franchisee
24 is in breach, violation, or non-compliance, Franchisee shall cure the breach, violation, or
25 non-compliance within thirty (30) days from receipt of the City's decision, or within
26 thirty (30) days from the issuance of a final non-appealable order by a court of
27 competent jurisdiction, or in the event that, by the nature of default, such default
28 cannot be cured within the thirty- (30) day period, initiate reasonable steps to remedy
29 such default and notify the City of the steps being taken and the estimated date that
30 they will be completed. If Franchisee fails to timely cure the breach, violation, or non-
31 compliance as provided in this Section 6.3 after receiving the City's decision or following
32 an appeal, then in addition to any other remedy at law or equity, or provided for in this
33 Franchise, the City may revoke the Franchise. Said revocation shall be effective
34 immediately after the delivery of a written notice of revocation executed by the Mayor
35 stating the grounds of the breach, violation, or non-compliance with the Franchise.

37 **6.4 Removal.**

38 6.4.1 If the Franchise has been terminated, revoked, canceled, or has expired,
39 and Franchisee has not exercised its rights, if any, to contest the termination,
40 revocation, cancelation or nonrenewal, the City may give Franchisee written notice to
41 remove its Facilities from the City's Rights-of-Way or it may, in the City's sole discretion

1 allow Franchisee to abandon the system in place if the Franchisee requests in writing to
2 abandon its Facilities in place. Within ten (10) days of receiving the City's notice, in the
3 event that the City requires removal of the Facilities, the Franchisee agrees to
4 commence removal of its system and to proceed diligently with such removal. Work
5 shall be completely done one hundred-eighty (180) days from notice to complete such
6 work.

7 6.4.2 If the Franchisee fails to remove any of its property as provided herein,
8 except to the extent this section provides otherwise, the City may elect to cause such
9 removal and may recover its reasonable costs and expenses from Franchisee, including
10 its reasonable attorney's fees and costs incurred in recovering such costs and expenses.

11 **6.5 Effective Abandonment.**

12 Any property of the Franchisee remaining in place ninety (90) days after the termination
13 or expiration of the Franchise may be considered permanently abandoned. Upon
14 abandonment of the property of the Franchisee in place the property shall become that
15 of the City, and the Franchisee shall submit to the City Clerk an instrument in writing, to
16 be approved by the City Attorney, transferring to the City the ownership of such
17 property.

18 **SECTION 7. FINANCIAL AND INSURANCE REQUIREMENTS.**

19 **7.1 Indemnity and Hold Harmless.**

20 7.1.1 General Indemnification. The Franchisee shall indemnify, defend, and hold
21 the City, its officers, officials, employees, agents, and consultants ("City"), harmless from
22 and against any and all liabilities, claims, fees, costs, and damages, whether to person
23 or property, or expense of any type or nature which may occur to the City or to any
24 third party, including without limitation reasonable attorneys' fees, experts' fees, and
25 other costs, by reason of the construction, operation, maintenance, repair, and
26 alteration of Franchisee's Facilities by Franchisee or any other act done under this
27 Franchise by Franchisee, its employees or agents, except to the extent that such
28 liabilities, claims, fees, costs, and damages are caused by the negligence or willful
29 misconduct of the City.

30 7.1.2 Relocation Indemnification. To the extent not covered by the indemnity
31 requirements of Section 7.1.1, Franchisee shall indemnify, defend and hold the City
32 harmless from and against any and all liabilities, claims, fees, costs, and damages,
33 whether to person or property, or expense of any type or nature which may occur to the
34 City or any third party, including without limitation reasonable attorneys' fees, experts'
35 fees and other costs, to the extent arising out of, or resulting from, directly or indirectly,
36 Franchisee's failure to remove, adjust, or relocate any of its Facilities in the Right-of-Way
37 in a timely manner in accordance with any relocation required by the City under this
38 Franchise, except to the extent that such liabilities, claims, fees, costs, and damages are
39 caused by the negligence of the City.

1 7.1.3 Procedures and Defense. In any case in which suit or action is instituted
2 against the City by reason of damages or injury caused in whole or in part by an act or
3 omission of Franchisee, the City shall cause written notice thereof to be given to the
4 Franchisee and Franchisee thereupon shall have the duty to appear and defend in any
5 such suit or action, without cost or expense to the City. The City may participate in the
6 defense of a claim, at its sole expense, and in any event, Franchisee may not agree to
7 any settlement of claims financially affecting the City without the City's prior written
8 consent, which consent shall not be unreasonably withheld. The City shall not agree to
9 any settlement of claims without the prior written consent of Franchisee.

10 7.1.4 Inspection or acceptance by the City of any work performed by Franchisee
11 at the time of completion of construction shall not be grounds for avoidance by
12 Franchisee of any of its obligations under this Franchise. Said indemnification
13 obligations shall extend to claims which are not reduced to a suit and any claims which
14 may be compromised, with Franchisee's prior written consent, prior to the culmination
15 of any litigation or the institution of any litigation.

16 **7.2 Insurance.**

17 7.2.1 General Requirement. During the entire term of this Franchise, the
18 Franchisee shall have and maintain in full force and effect, at its own cost and expense,
19 a Commercial General Liability insurance policy, including the City, its officers, elected
20 officials, boards, commissioners, and employees as an additional insured protecting the
21 City and all persons against liability for loss or damage or bodily injury, death, and
22 property damage occasioned by the operations of Franchisee under such Franchise.

23 7.2.2 Insurance Limits. Franchisee shall maintain in full force and effect at its
24 own cost and expense each of the following policies of insurance:

- 25 A. Commercial General Liability Insurance with limits of Five Million
26 Dollars (\$5,000,000) per occurrence for bodily injury and property
27 damage and Five Million Dollars (5,000,000.00) general aggregate
28 including personal and advertising injury, blanket contractual;
29 premises-operations; independent contractors; products, and
30 completed operations; explosion, collapse, and underground
31 (XCU). Commercial General Liability policy shall contain a Waiver
32 of Subrogation in favor of City.
- 33 B. Commercial Automobile Liability Insurance with combined single
34 limits of Three Million Dollars (\$3,000,000) each accident for
35 bodily injury and property damage covering all owned, hired, and
36 non-owned vehicles assigned to or used in the operation of the
37 Facilities in the City.
- 38 C. Professional Liability: One Million Dollars (\$1,000,000) per claim
39 and covering the negligent acts, errors and/or omissions of
40 Franchisee in the performance of professional services under this
41 Franchise

1 D. Worker's Compensation coverage as required by the Industrial
2 Insurance laws of the State of Washington and Employer's
3 Liability with a limit of \$1,000,000 each accident/disease/policy
4 limit.

5 E. Excess/Umbrella Liability with a limit of Five Million Dollars
6 (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000)
7 aggregate providing coverage above the primary commercial
8 general liability, commercial automobile liability and employer's
9 liability insurance required above.

10 7.2.3 Franchisee's insurance coverage shall be primary insurance with respect
11 to the City. Any insurance or self-insurance maintained by the City shall be in excess to
12 the Franchisee's insurance. A certificate of insurance reasonably acceptable to the City
13 shall be filed with the City Clerk. The insurance company(ies) shall be approved by the
14 state insurance Commissioner pursuant to Title 48 RCW or issued as a surplus line by a
15 Washington Surplus Lines Broker. The insurer must have at least an A-(VII) A.M. Best
16 Rating.

17 7.2.4 Upon receipt of notice(s) from its insurer Franchisee shall use commercially
18 reasonable efforts to provide the City thirty (30) days prior written notice of
19 cancellation. If the insurance is cancelled or materially altered so as to be out of
20 compliance with the requirements of this section, Franchisee shall provide a
21 replacement policy. Franchisee shall maintain continuous, uninterrupted insurance
22 coverage, in the amounts required, for the duration of the Franchise term, and in the
23 case of Commercial General Liability, for at least one year after expiration of this
24 Franchise.

25

26 **7.3 Performance Bond.**

27 7.3.1 If requested by the City, no later than the effective date of this Franchise,
28 Franchisee shall establish and provide to the City, as security for the faithful
29 performance of all of the requirements of this Franchise, a performance bond, from a
30 surety or financial institution acceptable to the City, in the amount of Fifty Thousand
31 Dollars (\$50,000). The performance bond may be drawn upon by the City for purposes,
32 including but not limited to the following: (1) failure of Franchisee to pay the City sums
33 due under the terms of this Franchise; (2) reimbursement of costs born by the City to
34 correct Franchise violations not corrected by Franchisee; and (3) monetary remedies or
35 damages assessed against Franchisee due to default or breach of Franchise
36 requirements.

37 7.3.2 The City shall give Franchisee written notice of any withdrawal under this section
38 upon such withdrawal. Within fifteen (15) days following receipt of such notice,
39 Franchisee shall restore the performance bond to the amount required under this
40 Franchise. Franchisee's maintenance of the bond shall not be construed to excuse

performance of obligations under the Franchise, or to limit the liability of Franchisee or otherwise limit the City's recourse to any other remedy available at law or equity.

SECTION 8. MISCELLANEOUS TERMS

8.1 Confirmation of Consistency with Federal Provisions.

If any portion of this Franchise ordinance is deemed to be inconsistent with the Telecommunications Act of 1996, as amended, or any federal or state rule or regulation now existing or hereinafter adopted, then to the extent of the inconsistency, the Act or rule or regulation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, and the remaining provisions of this Franchise ordinance shall not thereby be affected. If that rule or regulation allows existing franchises to not be affected, then there shall be no effect to this Franchise. If federal or state law changes, whether through legislative or rule-making action or court or administrative interpretation during the term of this Franchise, then this Franchise ordinance shall be considered modified to be consistent with such federal law changes.

8.2 Severability.

Each section, subsection, or other portion of this Ordinance shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder.

8.3 Notice.

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY OF LYNNWOOD:	Level 3 Communiucations, LLC:
City of Lynnwood	Level 3 Communications, LLC
City Clerk	Attn: NIS – Contract Management – cma@level3.com
19100 44th Ave W	1025 Eldorado Blvd.
Lynnwood, WA 98036	Broomfield, CO 80021

With a copy to:

Level 3 Communications, LLC
931 14th Street
Denver, CO 80301
Attn: Law Department

1 Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent
2 by personal delivery, United States Certified Mail, return receipt requested, or by
3 overnight delivery.

4 **8.4 Entire Franchise.**

5 This Franchise and its acceptance constitutes the entire terms between the parties as to
6 the subject matter herein and no other agreements or understandings, written or
7 otherwise, shall be binding upon the parties. Any amendment to this Franchise shall
8 only occur by mutual written agreement of the parties and amendment of this
9 Ordinance.

10 **8.5 Reserved Rights.**

11 The City reserves all rights and powers under its police powers and powers conferred by
12 federal, state or local law. In particular the City reserves the right to alter, amend, or
13 repeal its municipal code as it determines shall be conducive to the health, safety, and
14 welfare of the public, or otherwise in the public interest. The City agrees that by
15 accepting this Franchise, Franchisee has not waived its right to object to the application
16 to it of actions by the City pursuant to its reserved rights or police powers.

17 Both the City and the Franchisee expressly reserve all rights they may have under law to
18 the maximum extent possible; neither the City nor the Franchisee shall be deemed to
19 have waived any federal or state constitutional or statutory rights they may now have or
20 may acquire in the future by entering into this agreement.

21 **8.6 Franchise Acceptance.**

22 Within sixty (60) days of the effective date of this ordinance, Franchisee shall execute
23 and return to the City the Franchisee Acceptance form, attached to this Ordinance. The
24 executed Franchise Acceptance shall be returned to the City accompanied by
25 performance bonds, security funds, and evidence of insurance, all as provided in this
26 Ordinance. In the event Franchisee fails to accept this Franchise, or fails to provide the
27 required documents and/or funds, by said date, this Franchise shall be null and void and
28 Franchisee shall have no rights or privileges hereunder.

29 **8.7 Effective Date.**

30 This Franchise ordinance or a summary thereof consisting of the title shall be published
31 in the official newspaper of the City, and shall take effect and be in full force five (5)
32 days after publication; provided, however, that if Franchisee does not accept this
33 Franchise and comply with all conditions for such acceptance set forth herein, this
34 Franchise ordinance shall be null and void.

35 PASSED BY THE CITY COUNCIL this ____ day of _____, 2020.

36
37 APPROVED:

38
39 _____
40 Nicola Smith, Mayor

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ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

Karen Fitzhum, City Clerk

Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NUMBER: _____

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ACCEPTED this ____ day of _____, _____.

Name: _____, Title _____

Date:

CITY COUNCIL ITEM 90.3-B

CITY OF LYNNWOOD Administrative Services

TITLE: Resolution - Addressing Budget Gap for 2020

DEPARTMENT CONTACT: Sonja Springer and Corbitt Loch

SUMMARY:

The purpose of this agenda item is to confirm City Council direction provided during the June 29, 2020 Work Session. The attached resolution articulates the preference stated by a majority of Councilmembers regarding how to address the remaining budget gap for 2020.

POLICY QUESTION(S) FOR COUNCIL CONSIDERATION:

Should the City utilize General Fund reserves, and potentially EDIF funds, to achieve a balanced, ending fund balance for the 2019-2020 Budget? This approach is expected to negate the need to consider employee furloughs and layoffs for this budget period.

ACTION:

Approve the draft resolution as written or as amended by the City Council.

BACKGROUND:

Over the course of many public meetings, the City Council has discussed the forecasted gap between revenues and expenditures caused by the COVID-19 pandemic and other conditions. During the June 25 and 29, 2020 meetings, the City Council considered six options for closing the remaining \$2.2 million gap. During the June 29, 2020 discussion, a majority of the City Council stated a preference for Option 1 (utilize General Fund reserves). Some Councilmembers indicated that utilizing a combination of Option 1 and Option 2 (utilize EDIF funds) may be appropriate. EDIF = Economic Development Infrastructure Fund.

This direction from the Council has two important implications: 1. Furloughs and/or layoffs will not be used during the 2019-2020 biennium; and 2. the Beginning Fund Balance for the 2021-2022 biennium will likely have General Fund reserves that do not achieve the Financial Policy goal of 2.5 months of operating expenses. The latter gives important guidance now as staff prepared the Mayor's proposed budget for 2021-2022. The budget for the next biennium will include an approach to replenishing General Fund reserves.

Near the end of 2020, staff will present updated financial analysis and an ordinance to implement City Council authority to utilize General Fund reserves (potentially along with EDIF funds) to close the 2019-2020 budget.

Approaches to create a balanced budget for 2021-2022 may include measures not selected for the 2019-2020 biennium.

PREVIOUS COUNCIL ACTIONS:

The financial challenges created by COVID-19 have been the subject of many meetings of the City Council. This is expected to continue.

FUNDING:

NA.

KEY FEATURES AND VISION ALIGNMENT:

Provides critical guidance needed now to achieve a balanced budget for 2019-2020. This work is fully consistent with Strategic Plan Priority 2: *Ensure financial stability and economic success.*

ADMINISTRATION RECOMMENDATION:

Approve the draft resolution as written or as amended by the City Council.

DOCUMENT ATTACHMENTS

Description:	Type:
Draft resolution	Backup Material
Summary of June 29 City Council discussion	Backup Material



RESOLUTION NO. 2020-__

**A RESOLUTION OF THE CITY OF LYNNWOOD, WASHINGTON,
RELATING TO THE 2019-2020 BUDGET AND THE PREPARATION
OF THE MAYOR'S PROPOSED BUDGET FOR 2021-2022.**

WHEREAS, the COVID-19 pandemic has negatively impacted City revenues during 2020, creating an estimated \$7.8 shortfall in General Fund revenues during 2020; and

WHEREAS, after identifying approximately \$5.6 in expenditure reductions, a forecasted \$2.2 million budget gap remains, with six months remaining in the 2019-2020 budget biennium; and

WHEREAS, the City's General Fund reserves are at or above the adopted goal of equaling 2.5 months of operating expenditures for the previous calendar year; and

WHEREAS, the City is currently developing the Mayor's Proposed Budget for the 2021-2022 biennium and confirmation is needed regarding the approach to be used to address the remaining 2020 budget gap; and

WHEREAS, during meetings open to the public held on June 25 and June 29, 2020, the City Council considered six options for addressing the remaining 2020 budget gap and a majority of the City Council expressed a preference for Option 1—use of General Fund reserves; and

WHEREAS, in combination with General Fund reserves, a plurality of Councilmembers expressed interest in utilizing a portion of Economic Development Infrastructure Fund (EDIF) balance to resolve the budget gap for 2020; and

WHEREAS, the actual amount of the General Fund budget gap for 2020 cannot be known before November/December 2020; and

WHEREAS, at a future meeting, the City Council will consider an ordinance to amend the adopted 2019-2020 Budget in a manner consistent with this resolution; and

WHEREAS, the City Council has determined that the provisions of this resolution support the public's health, safety, and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD RESOLVES AS FOLLOWS:

Section 1. It is the intent of the City Council to authorize use of General Fund reserves (Revenue Stabilization Fund and/or Unassigned Fund Balance) to address the forecasted \$2.2

million gap between General Fund revenues and expenses during 2020. Such authorization would occur at a future time by approval of a budget amendment.

Section 2. Pursuant to Section 1 of this Resolution, the City Council confirms that the 2021-2022 Budget may have General Fund reserves less than the amount specified by the City of Lynnwood Financial Policies, and will include a plan and schedule for restoring General Fund reserves.

PASSED by the City Council this 13th day of July 2020.

APPROVED:

Nicola Smith, Mayor

ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

Karen Fitzthum, Acting City Clerk

Rosemary Larson, City Attorney

PASSED BY CITY COUNCIL: __/__/2020
RESOLUTION NO.: 2020-__

Date: June 30, 2020

To: City Council

From: Finance Director Springer

RE: Policy Direction Regarding the 2020 Budget Gap

Thank you for the City Council's ongoing interest and involvement as we address the forecasted \$9.4 million shortfall in the 2019-2020 Budget. It has been constructive and rewarding to work closely and collaboratively as we rise to and surmount this daunting challenge.

Most recently, staff presented six options for closing the \$2.2 million gap remaining after numerous measures have been implemented to reduce General Fund expenditures during 2020. These options were discussed during the June 25 Special Work Session and the June 29 Work Session. The six options were:

1. Utilize General Fund reserves.
2. Transfer monies from the EDIF Fund to the General Fund.
3. Institute mandatory furloughs for General Fund employees.
4. Institute layoffs for General Fund employees.
5. A combination of Options 1 and 2.
6. A combination of Options 3 and 4.

During the June 29 Work Session, individual Councilmembers expressed preferences for Option 1, Option 2, and Option 5. Preferences/views can be summarized as:

Councilmember	Option 1	Option 2	Option 5	Note
Frizzell	•		•	
Cotton	•			EDIF funds should not be used for operational costs.
Ross	•			
Smith		•		Option 1 should be a last-resort measure.
Altamirano-Crosby	•			
Hurst	•			Suspend all transfers to EDIF until reserve balance restored.
Sessions	•		•	

Importantly, Councilmembers do not prefer Options 3 or 4. Councilmembers who voiced support for Option 1 acknowledged the beginning fund balance for the 2021-2022 biennium may not equal 2.5 months of the operating expenses for 2020, and that the use of reserve funds is consistent with the adopted Financial Policies.

At year-end, the budget gap for 2020 may be more or less than the \$2.2 million forecasted. A budget amendment will be prepared when an accurate figure is available. While members of the City Council stated that layoffs may be needed for the 2021-2022 biennium, there was no support for Option 3 or 4 as a cost-savings measure for 2020.

CITY COUNCIL ITEM 90.3-C

CITY OF LYNNWOOD City Council

TITLE: Executive Session, if needed

DEPARTMENT CONTACT: Nicola Smith, Mayor

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available